

STATE OF MONTANA TERM CONTRACT

Department of Administration
State Procurement Bureau
165 Mitchell Building
PO Box 59620-0135
Helena, MT 59620-0135

Phone: (406) 444-2575 Fax: (406) 444-2529

T.C. # SPB-01-20P

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

This is a non-exclusive contract.

	FROM	SEPTEMBER 1, 2003	CONTRACT YEAR	NEW ()
	TO	AUGUST 30, 2005		RENEW (XX) 1 ST RENEWAL, 3 RD & 4 TH YRS
VENDOR ADDRESS	SEE VENDOR LIST (Page 5)		ORDER ADDRESS	
ATTN:			ATTN:	
PHONE:			PHONE:	
FAX:			FAX:	

Prices: PER CONTRACT
Delivery: PER CONTRACT
F.O.B.: PER CONTRACT
Terms: PER CONTRACT

Remarks: This list contains companies that may or may not supply licensed engineering or land surveying services. It is a violation of State Statute to practice engineering or land surveying without a license. To verify companies or individuals that are registered to provide engineering or land surveying through approval of the Board of Professional Engineers and Land Surveyors, contact the Department of Commerce at 444-4285 or 444-7776.

Montana Prevailing Wage Heavy and Highway Construction, effective July 1, 2000, and Montana Prevailing Wage Nonconstruction Services, effective August 13, 1999, must be applied to all projects resulting from this solicitation, except contract # SBP01-20-D, (Land & Water Consulting), will utilize Heavy & Highway Construction rates effective August 1, 2002 and Nonconstruction rates effective June 30, 2001. Copies can be obtained by calling the State Procurement Bureau at (406) 444-2575, or from the Department of Labor and Industry at (406) 444-5600.

NOTE: See page 62 for Land & Water Consulting price increases.

IFB/RFP No. :

SPB01-20P

PENNY MOON, Contracts Officer

DATE:

AUTHORIZED SIGNATURE

STATE OF MONTANA - TERM CONTRACT

Standard Terms and Conditions

AUTHORITY: The following bid/request for proposal or contract is issued in accordance with Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS: Any business entity, domestic or foreign, intending to transact business in Montana must apply for authority to do so with the Montana Secretary of State. Foreign business entities are obligated to determine whether they are transacting business in Montana, in accordance with sections 35-1-1026 and 35-8-1001, MCA, and if so, must apply for and receive a certificate of authority and continue to be in good standing with the Secretary of State for the duration of the contract. Violation of these requirements may void the contract. Proof of authority is required. Questions or registration may be accomplished by contacting the Secretary of State at (406) 444-3665 or by e-mail at sos@state.mt.us.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

INTELLECTUAL PROPERTY: All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by the contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of the contract. The State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

FACSIMILE RESPONSES: Facsimile responses will be accepted for Invitation for Bids ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt of bids. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to Requests for Proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

ACCEPTANCE/REJECTION OF BIDS OR PROPOSALS: The State reserves the right to accept or reject any or all bids or proposals, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids and proposals will be firm for 30 days, unless stated otherwise in the text of the invitation for bid or request for proposal.

PROTEST PROCEDURE: Bidders and offerors may protest a solicitation or award of a contract per section 18-4-242, MCA, and ARM 2.5.406. The protest must be in writing and state in detail all of the protestor's objections. The complete protest must be submitted to the department no later than the close of business 14 calendar days after the execution of the contract in question. If the 14th day falls on a Saturday, Sunday, or legal holiday, the protest is due at the end of the next business day. The State is under no obligation to delay, halt, or modify the procurement process pending the result of a protest, contested case proceeding, or judicial review.

MONTANA PREFERENCES: Public agencies are required by law to apply a 3-5% preference to bids submitted by Montana residents for the purchase of goods. (Preferences are not applied to Requests for Proposals, Term Contract Bids, for "services," or if federal funds are involved.) Bidders claiming this preference must have a current affidavit on file with the department, or submit one with the bid, in order to qualify for the preference. For complete information and affidavit forms, see www.state.mt.us/doa/ppd/resaffid.pdf. (Mont. Code Ann. §§ 18-1-102, 18-1-103, 18-1-113 and ARM 2.5.403.) In addition, Montana-made products are preferred for use in a contract if such goods are comparable in price and quality. (Mont. Code Ann. § 18-1-112.)

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

REFERENCE TO CONTRACT: The contract (Purchase Order) number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted, the State is allowed 30 days to pay such invoices.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

DEBARMENT: The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

U.S. FUNDS: All prices and payments must be in U.S. dollars.

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VENDOR LIST

SPB01-20P-A

Mike Koopal
Watershed Consulting LLC
410 Wisconsin Ave.
Whitefish MT 59937
Phone: (406) 862-3565
Fax: (406) 862-4341

SBP01-20-C

Clare Fitzgerald
Bitterroot Restoration Inc.
445 Quast Lane
Corvallis MT 59828
Phone: (406) 961-4991
Fax: (406) 961-4626

SBP01-20-E

Jack G. Thomas
Hydrotech Water Resource Consultants
1617 Euclid Ave Suite 1
Helena MT 59601
Phone: (406) 443-8577
Fax: (406) 443-5979

SBP01-20-G

Marc M. Spratt
RLK Hydro Inc.
PO Box 1579
Kalispell MT 59903
Phone: (406) 752-2025
Fax: (406) 257-4125

SBP01-20-I

Scott Payne
KirK Environmental LLC
PO Box 636
Sheridan MT 59749
Phone: (406) 842-7224
Fax: (406) 842-7230

SBP01-20-B

Pat Mullen
Maxim Technologies
PO Box 4699
Helena MT 59604
Phone: (406) 443-5210
Fax: (406) 449-3729

SBP01-20-D

Roger Noble
Land & Water Consulting, Inc.
PO Box 8027
Kalispell MT 59904
Phone: (406) 257-7200
Fax: (406) 257-7205

SBP01-20-F

~~Clint Brown
Water Consulting Inc
PO Box 981
Hamilton MT 59840
Phone: (406) 363-2828
Fax: (406) 363-5322~~

NOTE: This contract has been canceled effective September 1, 2003.

SBP01-20-H

Randy L. Huffsmith
Camp Dresser & McKee, Inc
34 N Last Chance Gulch Suite 104
Helena MT 59601
Phone: (406) 449-2121
Fax: (406) 449-6768

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **Watershed Consulting LLC** (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 81-0535127, 410 Wisconsin Ave Whitefish MT 59937, (406) 862-3565 and Fax (406) 862-4341.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION AND RENEWAL**

(a) This contract **SPB01-20P-A** shall take effect on August 20, 2001. The Contract shall terminate on August 30, 2005, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, for a period not to exceed two additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following services:

Contractors will reserve the option to attend regular FBC bimonthly meetings to present their ideas for critical VNRS and TMDL projects. The FBC is interested in hearing innovative ideas and new direction for these efforts that have a high potential to realize measurable improvements in water quality in Flathead Lake. Depending on grant funding cycles, ideas and projects the FBC agrees are critical will be prioritized for grant funding. The VNRS coordinator will develop the project team, approach, budget, and technical write up for selected grant applications. If the FBC is successful in receiving the grant funding, the FBC will award a contract to the contractor, team, or agency(s) responsible for the presenting the idea or project. The goal of this strategy is to offer grant funding as a financial incentive to contractors, teams, and agencies that have critical or innovative ideas that will result in measurable improvement in Flathead Lake water quality. Contractors will not be compensated for presenting their project ideas. In some cases, project development may be difficult due to limited grant funding or large project costs (e.g. sewerage portions of the Flathead Lake perimeter). The VNRS coordinator will research ways to fund these projects and propose alternative approaches to the FBC for final decision making whether to move forward or not with these projects. Timing between when projects are proposed and when projects are actually implemented often requires 6 to 12 months. In addition, the contractors for technical services should

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discuss potential projects and administrative needs with the VNRS Coordinator before presenting ideas or projects to the FBC.

Engineering and Construction Services

Contractor is anticipated to provide design / build services for, but not limited to: stream / rivers crossings, minor road construction, material testing, waste water treatment, storm water control, sediment control structures, and other engineering design as needed. In addition to design services, general construction services are desired (e.g., soil hauling, concrete structures, excavation services, installation of measuring devices, site preparation for planting, stream restoration etc.).

Landscape Architect Services and Native Plants

Contractor is anticipated to provide, but not limited to, planning and layout for vegetative buffer zones along waterways in the Flathead Basin. Contractor will provide native plant stock (bare root and/or soil covered stock) for buffer stripes in order to mitigate nutrient water quality impacts from overland flow on waterways, stabilize eroding soils and banks, and provide natural vegetative habitat while attempting to maintain views on lake properties. Contractor is anticipated to potentially propose new and improved ways to promote, fund, and expand the number of buffer zones in the Flathead Basin, and especially around the Flathead Lake perimeter.

Environmental and Watershed Support Services

Contractor will provide general environmental and watershed support for services that reduce the nutrient load in Flathead Lake from upstream tributaries, the lake perimeter, groundwater, and local watershed scale impacts. Contractor is anticipated to provide a host of services, but not limited to environmental permitting, water quality monitoring, watershed coordination, watershed analysis, watershed restoration planning, watershed restoration oversight, GIS/CADD support, data management, wetland delineation and restoration, stream restoration, water rights, hydrogeologic services and aquifer testing, laboratory analysis, fishery / aquatic life services, forestry services, agricultural management services, and other services as appropriate. FBC watershed projects are ongoing and more are anticipated in the Flathead Basin. The State assumes that the Contractor will help support primarily watershed efforts.

Education Services

Education is an important part of an effective VNRS and TMDL program. Contractors in all service areas may have the opportunity to provide education services through future grant funding. In addition, the State is interested in education initiatives that have a high likelihood of citizens, businesses, or entities learning how to better manage natural resources and nonpoint source waste streams.

Grant Funding and No Guarantee of Project Funding

The State does not warranty or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education

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projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not be retained in the end.

Allocation of Grant Funding

The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding (i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

Collaboration on Potential Projects

The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case by case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

(b) the State may withhold payments to the contractor if the contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State

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caused by the lack of performance.

(c) U.S. Funds: All prices and payments must be in U.S. dollars.

6. ACCESS AND RETENTION OF RECORDS

(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

(b) The contractor agrees to create and retain records supporting the services rendered (or supplies delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

9. HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$300,000 per occurrence and \$600,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

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Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: Contractor agrees to provide to the State, for each person that will be driving in connection with the performance of this contract, copies of current driver's licensure, valid for the State of Montana, and proof of current personal automobile liability insurance with combined single limits for bodily injury, personal injury, and property damage of \$25,000 per occurrence and \$50,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence driver. (Ref. Mont. Code Ann. §61-6-103)

Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence or the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: 1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers, or; 2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in

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accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

Contractor Registration Number: 53069

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

(b) the State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

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CLEAN-UP

The contractor shall:

- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

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Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 2002.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

20. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Mike Koopal
Watershed Consulting LLC
410 Wisconsin Ave.
Whitefish MT 59937
Phone: (406) 862-3565
Fax: (406) 862-4341

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529

23. MEETINGS

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Department of Administration. The contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

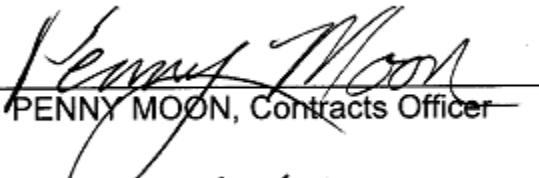
(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

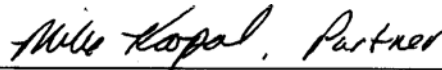
26. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

MIKE KOOPAL
WATERSHED CONSULTING, LLC
410 WISCONSIN AVE
WHITEFISH MT 59937
FEDERAL ID # 81-0535127


BY: 
PENNY MOON, Contracts Officer

BY:  Partner

DATE: 10/15/01

DATE: 9/04/01

Approved as to legal content:


Legal Counsel 10/15/01
Department of Administration

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

5.0 Cost

TD&H, Inc.

Project Manager (TD&H) P.E. \$110/hour

Senior Engineer P.E. (TD&H) \$101/hour

Engineer, P.E. (TD&H) \$78/hour

Watershed Consulting, LLC

Hydrologist \$50/hour

Geomorphologist \$50/hour

Riparian Ecologist \$50/hour

Fish Biologist \$50/hour

GIS Specialist \$35/hour

Technician \$25/hour

Mileage \$0.32/mile

4x4 \$0.34/mile

Per-diem \$26/day

Global Positioning

Monthly \$4,800.00

Weekly \$1,300.00

Daily \$440.00

Nuclear Density Machine

Monthly \$400.00

Weekly \$150.00

Daily \$50.00

Hourly \$8.00

*(Minimum \$25.00)*Lietz 3 with Field Book & Software

Monthly \$1,200.00

Weekly \$320.00

Daily \$110.00

Hourly \$20.00

(Minimum \$50.00)

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Schlegel & Sons Contractor, Inc.

PO BOX 998 KALISPELL, MT 59903

E-MAIL:schlegel.digisys.net FAX:752-7850 TELE:406-752-7850

CONTRACTOR HOURLY PRICE LIST**02/15/99**

D-8 CAT	\$90.00 to \$100.00/HR Depending On Material
690 JD Excavator	\$85.00 to \$90.00/HR Depending On Material
Slashbuster	- \$95.00/HR
140G Grader (AWD) –	65.00 to \$76.00/HR
Self-Contained Rock Drill (Materials Included)	\$125.00/HR
Skidders & Chain Saws	\$50.00/HR
Rock Drill, Jackhammer, & <u>Compressor (Materials Included) -</u>	\$100.00/HR
Front End Loader (3.5 YDS)	\$65.00/HR
Dyna-Roller (84 Inch Drum) --	\$60.00/HR
426 Backhoe	\$50.00/HR
Belly Dump (20 YDS) -	\$65.00/HR
Water Truck (4000 Gal) ----	\$55.00/HR
Dump Truck (10 to 12 YDS)	\$50.00/HR
Sand Truck	\$45.00/HR Plus Materials
Labors	\$25.00/HR
Sawyers -	- \$35.00/HR
Lowboys/Mobilization ---	\$55.00 to 75.00/HR Depending On Weight of Load

OTHER SERVICES: ROAD OILING - GRAVEL -- RIP RAP- TOP SOIL
PRICES CAN VARY DEPENDING ON SIZE OF PROJECT

*SCLEGEL & SONS CONTRACTOR, INC: IS IN NO WAY AFFILIATED WITH X. HIEGEL
 CONSTRUCTION, L & N TRUCKING, OK SCHLEGEL SAND & GRAVEL*

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **Maxim Technologies** (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 133264076, P.O. Box 4699 Helena MT 59604, (406) 443-5210 and Fax (406) 449-3729.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION AND RENEWAL**

(a) This contract **SPB01-20P-B** shall take effect on October 1, 2001. The Contract shall terminate on August 30, 2005, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, for a period not to exceed two additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following services:

Contractors will reserve the option to attend regular FBC bimonthly meetings to present their ideas for critical VNRS and TMDL projects. The FBC is interested in hearing innovative ideas and new direction for these efforts that have a high potential to realize measurable improvements in water quality in Flathead Lake. Depending on grant funding cycles, ideas and projects the FBC agrees are critical will be prioritized for grant funding. The VNRS coordinator will develop the project team, approach, budget, and technical write up for selected grant applications. If the FBC is successful in receiving the grant funding, the FBC will award a contract to the contractor, team, or agency(s) responsible for the presenting the idea or project. The goal of this strategy is to offer grant funding as a financial incentive to contractors, teams, and agencies that have critical or innovative ideas that will result in measurable improvement in Flathead Lake water quality. Contractors will not be compensated for presenting their project ideas. In some cases, project development may be difficult due to limited grant funding or large project costs (e.g. sewerage portions of the Flathead Lake perimeter). The VNRS coordinator will research ways to fund these projects and propose alternative approaches to the FBC for final decision making whether to move forward or not with these projects. Timing between when projects are proposed and when projects are actually implemented often requires 6 to 12 months. In addition, the contractors for technical services should

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

discuss potential projects and administrative needs with the VNRS Coordinator before presenting ideas or projects to the FBC.

Engineering and Construction Services

Contractor is anticipated to provide design / build services for, but not limited to: stream / rivers crossings, minor road construction, material testing, waste water treatment, storm water control, sediment control structures, and other engineering design as needed. In addition to design services, general construction services are desired (e.g., soil hauling, concrete structures, excavation services, installation of measuring devices, site preparation for planting, stream restoration etc.).

Environmental and Watershed Support Services

Contractor will provide general environmental and watershed support for services that reduce the nutrient load in Flathead Lake from upstream tributaries, the lake perimeter, groundwater, and local watershed scale impacts. Contractor is anticipated to provide a host of services, but not limited to environmental permitting, water quality monitoring, watershed coordination, watershed analysis, watershed restoration planning, watershed restoration oversight, GIS/CADD support, data management, wetland delineation and restoration, stream restoration, water rights, hydrogeologic services and aquifer testing, laboratory analysis, fishery / aquatic life services, forestry services, agricultural management services, and other services as appropriate. FBC watershed projects are ongoing and more are anticipated in the Flathead Basin. The State assumes that the Contractor will help support primarily watershed efforts.

Education Services

Education is an important part of an effective VNRS and TMDL program. Contractors in all service areas may have the opportunity to provide education services through future grant funding. In addition, the State is interested in education initiatives that have a high likelihood of citizens, businesses, or entities learning how to better manage natural resources and nonpoint source waste streams.

Grant Funding and No Guarantee of Project Funding

The State does not warranty or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not be retained in the end.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Allocation of Grant Funding

The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding (i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

Collaboration on Potential Projects

The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case by case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

(b) the State may withhold payments to the contractor if the contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

(c) U.S. Funds: All prices and payments must be in U.S. dollars.

6. ACCESS AND RETENTION OF RECORDS

(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

(b) The contractor agrees to create and retain records supporting the services rendered (or supplies delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

9. HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the negligent acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles leased, hired, or borrowed by the contractor.

Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any negligent act, omission, negligence of the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. Contractor agrees to be solely responsible for any deductible or self-insured retention with respect to claims filed against insurance defined herein.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. The Contractor is not responsible to provide Workers' Compensation coverage for volunteers except those under the Contractor's direct supervision and control. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission

under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

Contractor's Registration Number: 4213

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

(b) the State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

CLEAN-UP

The contractor shall:

- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

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Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

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21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Pat Mullen
Maxim Technologies
PO Box 4699
Helena MT 59604
Phone: (406) 443-5210
Fax: (406) 449-3729

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
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24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.


26. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

MAXIM TECHNOLOGIES
P.O. BOX 4699
HELENA MT 59604
FEDERAL ID # 133264076


BY: 
PENNY MOON, Contracts Officer

BY: 
(Name/Title)

DATE: 10/15/01

DATE: 10/3/01

Approved as to legal content:


Legal Counsel 10/15/01
Department of Administration

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES**COST ESTIMATE**

The FBC RFP requests that Maxim provide a detailed listing of costs the FBC would be charged for services described in our proposal to provide the above referenced services. We are unable to provide a detailed cost estimate for services to be provided because the level of effort has not yet been identified. Maxim would charge the FBC on a time and materials basis using hourly labor rates tabulated below. Direct costs. (excluding travel and per diem) would be billed in accordance with our standard fee schedule (see attached). Travel and per diem would be billed according to current State of Montana mileage and per diem rates. Maxim would prepare individual task orders and an associated cost estimate for each work element requested by FBC for FBC's review and approval prior to initiating work.

TABLE 4 Hourly Labor Rates Natural Resource Review and Oversight of Restoration Proposals	
Project Personnel	Hourly Labor Rate*
K. Bill Clark - Project Manager	\$85
Garv Fischer- Engineer/Hydrologist	\$85
Pat Mullen - Natural Resource Specialist	\$75
Bill Rav - Field Technician	\$45
Fred Gifford - GIS/Database Administrator	\$75
Mike Cormier - Soil Scientist	\$75
Mark Pearson - GIS/Database Specialist	\$59
Doug Rogness - Hydrogeologist	\$75
Campbell Stringer_- Hydrogeologist	\$75

* Hourly labor rates include wages, benefits, and general and administrative overhead.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

NW District Fee Schedule Environmental Services

PERSONNEL LABOR

Sr. Project Scientist/Engineer/Manager	\$95.00/hour
Project Scientist/Engineer/Manager.....	\$77.00/hour
Staff Scientist/Engineer/Manager.....	\$67.00/hour
Field Scientist/Engineer	\$57.00/hour
Scientist/Engineer I	\$52.00/hour
Sr. Field Technician	\$52.00/hour
Field Technician.....	\$45.00/hour
Technician I.....	\$35.00/hour
Sr. CAD/GIS Operator/Graphics (includes equip.)....	\$59.00/hour
CAD/GIS Operator/Graphics (includes equip.)	\$45.00/hour
Word Processor/Office Clerk	\$32.00/hour
Special Consultation -	
Expert Testimony/Court Appearance	Per Quotation

WATER SAMPLING/TREATMENT EQUIPMENT

Aquifer Test Trailer	\$30.00/hour
Crane & Reel.....	\$75.00/day
Current Meter.....	\$10.00/day
Cyanide Probe	\$20.00/day
Deionized Water..	\$ 4.00/gal.
Dissolved Oxygen Meter.....	\$15.00/day
Dual Interface Probe.....	\$30.00/day
DSM Recorder	\$50.00/mo.
Eh Meter.....	\$10.00/day
Peristaltic Pump	\$ 5.00/day
Portable Infrared Spectrometer	\$100.00/day
Portable Water Treatment System	\$160.00/day
Pressure Transducer.....	\$40.00/day
Pressurized Bailers	\$12.50/unit
PVC/Teflon Bailer	\$ 5.00/day
Sediment Sampler	\$10.00/day
Specific Conductivity/pH Meter.....	\$10.00/day
Turbidity Meter.....	\$10.00/day
Water Level Indicator.....	\$10.00/day
Water Quality Field Test Kit w/reagents	\$20.00/day

AIR SAMPLING/TREATMENT EQUIPMENT

Air Pump and Filters (asbestos)	\$30.00/day
Anemometer.....	\$15.00/day
Draeger Air Pump	\$ 5.00/day
Draeger Sample Tubes.....	\$ 5.00/item
Explosivity Meter.....	\$10.00/day
Field Gas Chromatograph	\$200.00/day
Flameionization Detector (FID).....	\$75.00/day
Landfill Gas Analyzer	\$50.00/day
Photoionization Detector(PID).....	\$50.00/day
Soil Vapor Probe.....	\$50.00/day
Thermal Oxidizer w/Blower.....	Per Quotation

WELL PUMPS

Bladder Pump	\$25.00/hour
Mechanical Bailer.....	\$25.00/day
PVC Hand Pump.....	\$25.00/day
Redi-flow Pump w/generator	\$60.00/day

MISCELLANEOUS EQUIPMENT

ATV	\$50.00/day
Decontamination Trailer.....	\$70.00/day
Decon/Personal Protection Equipment (PPE)...	\$15.00/day
Level D PPE (per person).....	\$10.00/day
Level C PPE (per person)	\$40.00/day
Levels A & B PPE (per person)	Per Quotation
Portable Generator	\$40.00/day
Survey Level & Rod	\$30.00/day
GPS Instrument	\$50.00/day

LABORATORY SERVICES

Water, Soil, Air Analyses	Per Quotation
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DIRECT EXPENSES

Per Diem	\$26.00/day
Lodging	cost + 15%
Auto or Pickup Mileage	\$ 0.35/mile
4-Wheel Drive Mileage	\$ 0.45/mile
Photocopies	\$ 0.10/copy
All other project expenses (e.g., shipping, travel, special equipment rental & subcontractors)	cost + 15%

OTHER SERVICES

Geotechnical Engr. Services	Per Quotation
Const. Observation and Materials Testing	Per Quotation
Drilling Services	Per Quotation

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

NW District. Fee Schedule Geotechnical Services

FIELD INVESTIGATION

Mobilization of Truck-Mounted Drill Rig with pick-up and two man crew, round trip	\$ 3.00/mile
Drill Rig and pick-up with two (2) man drill crew:	
Mobile B-53	\$125.00/hour
Mobile B-61	\$140.00/hour
Additional Charge for drilling on sites containing hazardous or toxic material	Quotation on Request
Drill bits, air compressor, water truck, equipment site access, or other auxiliary equipment	Cost +15%
Field Equipment.	Quotation on Request

ENGINEER/SCIENTIST

Principal Engineer or Scientist, per hour	\$100.00
Sr. Project Engineer or Scientist, per hour.....	\$95.00
Certified Industrial Hygienist, per hour	\$75.00
Project Engineer or Scientist, per hour	\$75.00
Staff Engineer or Scientist, per hour	\$65.00
Field Engineer or Scientist, per hour	\$55.00

TECHNICIAN

Senior Engineering Technician, per hour	\$55.00
Engineering Technician, per hour	\$48.00
Associate Engineering Technician, per hour	\$46.00
Student Technician, per hour	\$40.00
Overtime surcharge, per hour	\$12.00
CAD/GIS Operator, per hour	\$45.00
Word Processor, per hour	\$32.00
Special Consultation for legal proceedings, court appearance, depositions, per hour (4 hour minimum).....	\$125.00

LABORATORY TESTING OF SOIL AND ROCK

Sieve Analysis (ASTM D422 and 01140)	
a. Coarse Aggregate above No. 4 (ASTM C136)	\$42.50
b. Fine Aggregate below No. 4 through No. 200 (ASTM C136 & C117)	\$45.00
c. Coarse and Fine Aggregate through No. 200 (ASTM C117)	\$65.00
d. No. 100 to 0.005 mm	\$40.00
Liquid-Plastic Limit (ASTM 04318)	\$55.00
One Point Liquid-Plastic Limits (ASTM 04318)	\$48.00
Specific Gravity (ASTM D854)	\$40.00
Moisture Content (ASTM 02216)	\$4.00
Visual Classification (ASTM 2487)	\$4.00
Moisture-Density Determination	
ASTM D698 (Standard)	\$100.00
ASTM D1557 (Modified)	\$115.00
One Point Check	\$35.00
Minimum/Maximum Density (ASTM D4253 & 0425)	\$200.00
Density & Moisture Content (ASTM 02937)	\$25.00
R-Value (ASTM 02844)	\$260.00
California Bearing Ratio (CBR) (ASTM 01883)	\$225.00
Permeability (ASTM 02434)	\$220.00

LABORATORY TESTING OF SOIL AND ROCK

Sulfate Content	\$25.00
pH and Resistivity,-	
a. Cohesive Soils	\$60.00
b. Non-cohesive Soils	\$40.00
One-Dimensional Consolidation or Expansion	
a. 4 ksf load	\$75.00
b. 8 ksf load	\$85.00
c. 16 ksf load	\$95.00
d. 32 ksf load	\$110.00
e. Add to a, b, & c for time rate readings	
(1) 2 loads	\$50.00
(2) 4 loads	\$100.00
Unconfined Compression:	
a. Soil (ASTM 2166).....	\$75.00
b. Rock (ASTM 2938)	\$95.00
Direct Shear:	
a. Consolidated Undrained, per point	\$42.00
b. Consolidated Drained, per point.....	\$50.00
c. Residual Strength, per point.....	\$20.00
Permeability Using Triaxial Cell	
a. Undisturbed or Remolded	\$235.00
Pin Hole Dispersion	\$150.00
Slake Durability Test.....	\$125.00
Special Tests.....	Quotation on Request

Laboratory Technician for sample preparation,
Per hour..... \$46.00

DIRECT CHARGES

Vehicle Pick-up Truck (2wd)	\$0.35/mile or \$120.00/week
Vehicle Pick-up Truck (4wd)	\$0.45/mile or \$150.00/week
Per Diem Per day	lodging cost + \$26.00/day
All other out-of-pocket expenses	
(i.e. special equipment rental, travel, protective clothing, & shipping)	
Equipment and lab	cost +15% Field Test Quotation on Request

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES**PERSONNEL LABOR****Engineer/Scientist:**

Principal Engineer or Scientist, per hour	\$100.00
Sr. Project Engineer or Scientist, per hour	\$95.00
Certified Industrial Hygienist, per hour	\$75.00
Project Engineer or Scientist, per hour	\$75.00
Staff Engineer or Scientist, per hour	\$65.00
Field Engineer or Scientist, per hour	\$55.00

Technician:

Sr. Engineering Technician, per hour	\$55.00
Engineering Technician, per hour	\$48.00
Associate Engineering Technician, per hour	\$46.00
Student Technician, per hour	\$40.00
Overtime surcharge, per hour	\$12.00
CAD/GIS Operator, per hour	\$45.00
Word Processor, per hour	\$32.00
Special Consultation for legal proceedings (4 hr minimum), per hour	\$125.00

LABORATORY TESTING -SOILS

Sieve Analysis (ASTM D422 and 01140)	
a. Standard Sieves through No. 200	\$65.00
b. No. 200 to .005 mm, add	\$40.00
Liquid-Plastic Limit (ASTM 04318)	\$55.00
Specific Gravity (ASTM D854)	\$40.00
Moisture Content (ASTM 02216)	
\$10.00Moisture-Density Determination	
ASTM 0698 (Standard)	\$100.00
ASTM 01557 (Modified)	\$115.00
One Point Check	\$35.00
Minimum/Maximum Density (ASTM 04253 & 04254)	\$200.00
Density & Moisture Content (ASTM 2937)	\$25.00
R-Value (ASTM 02844)	\$250.00
California Bearing Ratio (CBR) (ASTM D1883)	\$225.00
Permeability (ASTM 02434)	\$275.00
Sulfate Content	\$25.00
pH and Resistivity -cohesive	\$60.00
pH and Resistivity - non-cohesive	\$40.00

LABORATORY TESTING -AGGREGATES**Sieve Analysis**

a.Coarse Aggregate above No. 4(ASTM C136)	\$45.00
b. Fine Aggregate below No. 4 through No. 200 (ASTM 0136 & C117)	\$45.00
c. Coarse & Fine Aggregate through No. 200 (ASTM C136 & C117)	\$65.00
Specific Gravity	
a. Coarse (ASTM C127)	\$40.00
b. Fine (ASTM C128)	\$40.00
Unit Weight and Voids (ASTM C29)	\$30.00
Los Angeles Abrasion (ASTM C131)	\$120.00
Sodium or Magnesium Sulfate Soundness (ASTM C88)	\$225.00
Organic Impurities (ASTM C40)	\$40.00
Clay Lumps and Friable Particles (ASTM C142)	\$40.00
Flat and Elongates (CRD-C119)	\$40.00
Lightweight Particles (ASTM 0123)	\$90.00
Stripping Test (ASTM 01664)	\$50.00
Lottman Modified	\$100.00
Durability Index (AASHTO T210) - Coarse, Dc	\$115.00
Durability Index (AASHTO T210) - Fine, Of	\$115.00
Fractured Faces Test (DFT 507)	\$40.00
Sand Equivalent Test (ASTM 2419)	\$80.00

LABORATORY TESTING - ASPHALTIC CONCRETE

Extraction of Asphalt (ASTM 02172)	\$120.00
Extraction & Gradation (ASTM D2172,C136 & C117) ..	\$175.00
Prepare Marshall Specimens (set of 3) (ASTM 01559) ..	\$100.00
Flow & Stability (set of 3) (ASTM 01559)	\$100.00
Coring Asphaltic Concrete with Operator (ASTM 02726) ¹	\$60.00/hour
Unit Weight Determination	\$25.00
Asphaltic Concrete Mix Design, Aggregate Tests Not Included (ASTM 01560; 01561; 01559)(50 Blow Marshall) ..	\$750.00
(75 Blow Marshall)	\$800.00
Haveem Method	\$1,750.00
Theoretical Max.: Specific Gravity (ASTM 2041)	\$50.00/pt
Immersion-Compression (ASTM 01074 & 01075)	\$400.00

PORTLAND CEMENT CONCRETE AND MASONRY

Compressive Strength Test	
a. 602 Cylinder (ASTM C39)	\$15.00
b. 2x2 Cubes	\$15.00
c. Concrete Core (ASTM C42)	\$35.00
d. Concrete Block (ASTM 0140)	\$45.00
e. Grout Prism (UBC 24-22)	\$25.00
f. Masonry Prism (ASTM E447)	\$100.00
Unit Weight of Cylinder or Cores	\$15.00
Flexural Strength of Beam (ASTM C78).....	\$50.00
Provide 6x12 Cylinder Molds	\$2.50
Concrete Mix Design (Compressive Strength)	
Aggregate Tests Not Included; (per point)(3 min.)	\$200.00
Coring Concrete With Operator (ASTM C42)'	\$60.00/hour
Add Sit Charge Per Inch Depth	
2-Inch Diameter	\$3.50
4-Inch Diameter	\$4.60
Concrete Control Test within 5 miles of laboratory	
incl. Slump, Air Content, Cast	
and Compressive Strength 3 Cyl	\$135.00
Compressive Strength 4 Cyl	\$145.00

LABORATORY TESTING -STEEL

Weld Inspection - Visual	\$55.00/hour
Technician Observe & Test Bott Connections ..	\$55.00/hour
Tensile Strength and Elongation (ASTM A370)	\$73.00
Welder Certification	
a. Coupons (3/8" Groove)	Cost +20%
b. Pipe Coupon (Schedule 40)	Cost +20%
c. Machining Fee	Cost +20%
d. Guided Bend Test, per coupon	\$22.00
e. Prepare Certificate and Card	\$20.00
f. Renew Certificate and Card	\$20.00

DIRECT EXPENSES

Vehicle Pick-up Truck	\$ 0.35/mile or \$120.00/week
Per Diem, per day	lodging cost +26.00/day
Nuclear Densometer, per day	\$35.00
All other out-of pocket expenses, (e.g. special equipment rental, travel, protectiveclothing, & shipping)	cost +15%
Field test equipment and lab	Quotation on Request

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **Bitterroot Restoration Inc.**, (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 81-0440317, 445 Quast Lane Corvallis MT 59828, (406) 961-4991 and Fax (406) 961-4626.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION AND RENEWAL**

(a) This contract **SPB01-20P-C** shall take effect on August 20, 2001. The Contract shall terminate on August 30, 2005, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, for a period not to exceed two additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following services:

Contractors will reserve the option to attend regular FBC bimonthly meetings to present their ideas for critical VNRS and TMDL projects. The FBC is interested in hearing innovative ideas and new direction for these efforts that have a high potential to realize measurable improvements in water quality in Flathead Lake. Depending on grant funding cycles, ideas and projects the FBC agrees are critical will be prioritized for grant funding. The VNRS coordinator will develop the project team, approach, budget, and technical write up for selected grant applications. If the FBC is successful in receiving the grant funding, the FBC will award a contract to the contractor, team, or agency(s) responsible for the presenting the idea or project. The goal of this strategy is to offer grant funding as a financial incentive to contractors, teams, and agencies that have critical or innovative ideas that will result in measurable improvement in Flathead Lake water quality. Contractors will not be compensated for presenting their project ideas. In some cases, project development may be difficult due to limited grant funding or large project costs (e.g. sewerage portions of the Flathead Lake perimeter). The VNRS coordinator will research ways to fund these projects and propose alternative approaches to the FBC for final decision making whether to move forward or not with these projects. Timing between when projects are proposed and when projects are actually implemented often requires 6 to 12 months. In addition, the contractors for technical services should

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

discuss potential projects and administrative needs with the VNRS Coordinator before presenting ideas or projects to the FBC.

Landscape Architect Services and Native Plants

Contractor is anticipated to provide, but not limited to, planning and layout for vegetative buffer zones along waterways in the Flathead Basin. Contractor will provide native plant stock (bare root and/or soil covered stock) for buffer stripes in order to mitigate nutrient water quality impacts from overland flow on waterways, stabilize eroding soils and banks, and provide natural vegetative habitat while attempting to maintain views on lake properties. Contractor is anticipated to potentially propose new and improved ways to promote, fund, and expand the number of buffer zones in the Flathead Basin, and especially around the Flathead Lake perimeter.

Education Services

Education is an important part of an effective VNRS and TMDL program. Contractors in all service areas may have the opportunity to provide education services through future grant funding. In addition, the State is interested in education initiatives that have a high likelihood of citizens, businesses, or entities learning how to better manage natural resources and nonpoint source waste streams.

Grant Funding and No Guarantee of Project Funding

The State does not warranty or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not retained in the end.

Allocation of Grant Funding

The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding (i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

Collaboration on Potential Projects

The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case by case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

(b) the State may withhold payments to the contractor if the contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

(c) U.S. Funds: All prices and payments must be in U.S. dollars.

6. ACCESS AND RETENTION OF RECORDS

(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

(b) The contractor agrees to create and retain records supporting the services rendered (or supplies delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

9. HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles leased, hired, or borrowed by the contractor.

Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence or the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: 1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers, or; 2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

Contractor's Registration #13247

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

(b) the State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

CLEAN-UP

The contractor shall:

- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeree objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

19. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 2002.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

20. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Clare Fitzgerald
Bitterroot Restoration Inc.
445 Quast Lane
Corvallis MT 59828
Phone: (406) 961-4991
Fax: (406) 961-4626

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529

23. MEETINGS

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Department of Administration. The contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

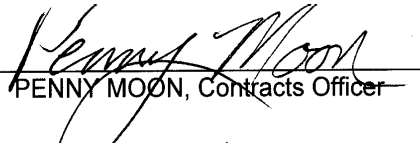
FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

26. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

BITTERROOT RESTORATION INC
445 QUAST LANE
CORVALLIS MT 59828
FEDERAL ID #81-0440317

BY: 
PENNY MOON, Contracts Officer

BY:

BY: LEONARD BALLEK

DATE: 8/30/01

DATE: 8/27/01

Approved as to legal content:



Legal Counsel 8/30/01
Department of Administration

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES**COSTS**

Hourly professional rates for BRI personnel are listed in Table 3 and other costs of doing business are identified in Table 4 below. Please note that key project individuals are described in bold letters.

Table 3: Hourly Professional Rates for BRI Personnel

PERSONNEL	TITLE	ROLE	HOURLY RATE
Clare Fitzgerald	GIS Specialist	Project Manager	\$65.
Gant Massey	Director of Consulting	Lead Technical Person	\$80
David McAdoo	Restoration Planning Specialist	Assistant Lead Technical Person	\$65.
Len Ballek	Vice President/Director of Planning & Marketing	Project coordination	\$160
Patrick Burke	President/Chairman	Project coordination	\$160
Bernadette Coone	Director of Plant Production	Plant propagation	\$80
Sue Crimmons	Restoration Specialist/General Sales	Site design, Oversee plant orders	\$65
Paul Hansen	Senior Consultant/ Riparian Ecologist	Develop education component	\$80
Steve Kloetzel	Director of Restoration Services	Organize & oversee field work	\$65
Maggie Carmona	Plant Growth & Maintenance Supervisor	Supervise nursery workers	\$45
Eusebio Carmona	Inventory Manager	Inventory	\$45
Paul Madeen	Field Work Crew Supervisor	Supervise field crews	\$45
Brooks Priest	Field Work Crew Supervisor	Supervise field crews	\$45
Bill Thompson	Senior Restoration Consultant	Riparian research	\$65
Matt Ogden	Plant Propagation Manager	Seed propagation	\$65
Tom Parker	Riparian/Wetland Specialist	Design projects with bioengineering components	\$80
Mark Rohweder	Restoration Specialist/Technical Sales	Site design, Oversee bioengineering product orders	\$65
John DiGregoria	Restoration Ecologist	Wetlands delineation	\$65
Betty Eldrege	Administrative Assistant	Contract reporting & tracking	\$31
Blaise Hartman	Chief Financial Officer	Accounting	\$80
Field Laborers	Field Laborers	Planting, erosion control	\$32
Nursery Workers	Nursery Workers	Plant propagation duties	\$32

Table 4. Other Costs

ITEM	RATE
Photocopies	No charge
Telephone calls	No charge
Computer time	No charge
Billing support/word processing	No charge
Postage	No charge
Priority Mail	At cost
Mileage	\$49/day + \$0.26/mile
Per diem	\$85/day
1 ton truck with trailer	\$0.75/mile
T-330 Hydroseeder	\$100/hr + \$1.00/mile
All Terrain Vehicles to harrow & broadcast seeds	\$50/day
Power Augers for large plant installation	\$50-\$100/da

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Electric hammer w/ generator for cuttings installation	\$100/day
Subcontractor	As billed b subcontractor
Plants	See Appendix 2A
Erosion Control products	See Appendix 2C
Total station survey equipment Nikon DTM 520	\$180/day
GPS survey equipment - sub meter accuracy (Ranger TDS	\$180/day
GPS unit - 3 meter accuracy	\$20/day

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

	AVAILABLE PLANTS IN 1	GALLON CONTAINERS		
		PRICE	LIST	
				Unit
Genus	Species	Size	Common Name	Price
ABIES	CONCOLOR	1G	WHITE FIR	4.80
ABIES	GRANDIS	1G	GRAND FIR	4.80
ABIES	LASIOCARPA	1G	SUBALPINE FIR	5.49
ACER	GLABRUM	1G	ROCKY MOUNTAIN MAPLE	4.39
ACER	GRANDIDENTATUM	1G	BIGTOOTH MAPLE	5.49
ACER	NEGUNDO	1G	BOXELDER	3.81
ALNUS	INCANA (A.tenuifolia)	1G	MOUNTAIN ALDER	4.11
ALNUS	SINUATA	1G	SITKA ALDER	4.11
AMELANCHIER	ALNIFOLIA	1G	SERVICEBERRY	4.39
BERBERIS	NERVOSA	1G	DULL OREGON GRAPE	4.39
BERBERIS	REPENS	1G	OREGON GRAPE	4.39
BETULA	GLANDULOSA	1G	BOG BIRCH	4.39
BETULA	OCCIDENTALIS	1G	WATER BIRCH	3.81
BETULA	PAPYRIFERA	1G	PAPER BIRCH	3.81
CEANOTHUS	CORDULATUS	1G	COMMON WHITETHORN	4.11
CEANOTHUS	PROSTRATUS	1G	SQUAW CARPET	4.39
CEANOTHUS	SANGUINEUS	1G	REDSTEM CEANOTHUS	4.39
CEANOTHUS	VELUTINUS	1G	SNOWBRUSH CEANOTHUS	4.39
CERCOCARPUS	LEDIFOLIUS	1G	CURL-LEAF MOUNTAIN-MAHOGANY	4.39
CERCOCARPUS	MONTANUS	1G	TRUE MOUNTAIN-MAHOGANY	4.39
CORNUS	STOLONIFERA	1	REDOSIER DOGWOOD	3.81
CRATAEGUS	DOUGLASII	1G	DOUGLAS HAWTHORN	4.11
CRATAEGUS	SUCCULENTA	1	SUCCULENT HAWTHORN	3.64
HOLODISCUUS	DISCOLOR	1G	OCEANSPRAY	4.39
IRIS	VERSICOLOR	1G	BLUE FLAG	4.85
JUNIPERUS	COMMUNIS	1G	COMMON JUNIPER	4.80
JUNIPERUS	SCOPULORUM	1G	ROCKY MOUNTAIN JUNIPER	4.80
LARIX	OCCIDENTALIS	1G	WESTERN LARCH	4.80
PHILADELPHUS	LEWISII	1G	MOCK-ORANGE	4.62
PICEA	GLAUCA	1G	WHITE SPRUCE	4.80
PICEA	GLAUCA V. DENSATA	1G	BLACK HILLS SPRUCE	4.80
PICEA	PUNGENS V. GLAUCA	1G	COLORADO BLUE SPRUCE	4.80
PICEA	PUNGENS V. GLAUCA	1G	COLORADO BLUE SPRUCE	4.80
PINUS	ALBICAULIS	1G	WHITEBARK PINE	5.49
PINUS	CONTORTA	1G	LODGEPOLE PINE	4.80
PINUS	EDULIS	1G	PINYON PINE	5.49
PINUS	FLEX ILIS	1 G	LIMBER PINE	4.80
PINUS	PONDEROSA	1G	PONDEROSA PINE	4.80
POPULUS	ANGUSTIFOLIA	G	NARROWLEAF COTTONWOOD	4.11
POPULUS	DELTOIDES	1G	PLAINS COTTONWOOD	4.11
POPULUS	FREMONTII	1G	FREMONT NT COTTONWOOD	4.11
POPULUS	SARGENTII	1G	PLAINS COTTONWOOD	4.11
POPULUS	ITREMULOIDES	1G	QUAKING ASPEN	3.81

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

POPULUS	TRICHOCARPA	1G	BLACK COTTONWOOD	4.11
POTENTILLA	FRUTICOSA	1 G	SHRUBBY CINQUEFO	3.81
PRUNUS	AMERICAN	1G	AMERICAN PLUM	4.39
PRUNUS	BESSEYI	1G	WESTERN SAND CHERRY	3.64
PRUNUS	VIRGINIANA	1G	CHOKECHERRY	3.81
PRUNUS	VIRGINIANA V. SCCHUBE	1G	CANADA RED CHERRY	3.81
PSEUDOTSUGA	MENZIESII	1G	DOUGLAS-FIR	4.80
RHUS	GLABRA	1G	SMOOTH SUMAC	4.11
RHUS	TRILOBATA	1G	OAKLEAF SUMAC	4.11
RIBES	AUREUM	1G	GOLDEN CURRANT	4.11
RIBES	CEREUM	1G	WAX CURRANT	4.11
ROSA	NUTKANA	1G	WILD ROSE	3.81
ROSA	WOODSII	1G	WOODS ROSE	3.81
SALIX	AMYGDALOIDES	1G	PEACHLEAF WILLOW	3.81
SALIX	BEBBIANA	1G	BEBB'S WILLOW	3.81
SALIX	BOOTHII	1G	BOOTH'S WILLOW	3.81
SALIX	DRUMMONDIANA	1G	DRUMMOND WILLOW	3.81
SALIX	EXIGUA	1G	SANDBAR WILLOW	3.81
SALIX	GEYERIANA	1G	GEYER'S WILLOW	3.81
SALIX	LASIANDRA	1G	PACIFIC WILLOW	3.81
SALIX	LUTEA	1G	YELLOW WILLOW	3.81
SALIX	SCOULERIANA	1G	SCOULER'S WILLOW	3.81
SAMBUCUS	CERULEA	1G	BLUE ELDERBERRY	4.11
SAMBUCUS	RACEMOSA	1G	BLACK ELDERBERRY	3.64
SAMBUCUS	SPP	1G	ELDERBERRY SPECIES	4.11
SHEPHERDIA	ARGENTEA	1G	SILVERLEAF BUFFALOBERRY	4.11
SHEPHERDIA	CANADENSIS	1G	RUSSET BUFFALO BERRY	4.11
SORBUS	SCOPULINA	1G	DWARF MOUNTAIN-ASH	4.11
SORBUS	SITCHENSIS	1G	SITKA MOUNTAIN-ASH	4.11
SPIRAEA	BETULIFOLIA	1G	WHITE SPIREA	3.81
SPIRAEA	DOUGLA SII	1G	PINK SPIREA	3.81
SYMPHORICARPOS	ALBUS	1G	COMMON SNOWBERRY	4.39
SYMPHORICARPOS	OCCIDENTALIS	1G	WESTERN SNOWBERRY	4.39
SYMPHORICARPOS	OREOPHILUS	1G	MOUNTAIN SNOWBERRY	4.39
TYPHA	ANGUSTIFOLIA	1G	NARROWLEAF CATTAIL	3.81

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

AVAILABLE PLANTS IN 1.0T CONTAINERS

MT: (406)961-4991 and CA: (916)434-9695
Plant Product Availability as of 5/1/01

Genus_	Species -	Size	Price	Avail	Genus	Species	Size	Price	Avail
ACER	grandidentatum	MT 10T	1.31	8856	SAGITTARIA	latifolia	MT 10T	1.05	500
ACER	negundo	MT 10T	1.03	5825	SALIX	amygdaloides	MT 10T	0.99	1166
ANUS	incana (a.tenuifolia)	MT 10T	0.99	4220	SALIX	bebbiana	MT 10T	0.92	12805
AMELANCHIER	utahensis	MT 10T	1.03	6302	SALIX	boothii	MT 10T	0.92	117855
ARCTOS	patula	MT 10T	2.36	2231	SALIX	drummondiana	MT 10T	0.92	10106
ARTEMISIA	cana	MT 10T	0.92	522	SALIX	exigua	MT 10T	0.92	22350
ARTEMISIA	frigida	MT 10T	0.92	3537	SALIX	geyeriana	MT 10T	0.92	1093
ARTEMISIA	tridentata	MT 10T	0.92	3000	SALIX	lasiandra	MT 10T	0.92	1214
ARTEMISIA	tridentata v. tridentat	MT 10T	0.92	2330	SALIX	lutea	MT 10T	0.92	3428
ARTEMISIA	tridentata v. vaseya	MT 10T	0.92	6735	SALIX	planifolia	MT 10T	0.92	204
CEANOTHUS	cordulatus	MT 10T	1.31	4236	SAMBUCUS	cerulea	MT 10T	1.31	1592
CEANOTHUS	integerrimus	MT 10T	1.31	7500	SAMBUCUS	racemosa v. arbores	MT 10T	1.31	2313
CEANOTHUS	prostratus	MT 10T	1.16	6635	SAMBUCUS	vermiculatus	MT 10T	1.10	7448
CEANOTHUS	velutinus	MT 10T	1.31	2036	SHEPHERDIA	argentea	MT 10T	1.03	8854
CERCOCARPUS	ledifolius	MT 10T	1.10	7012	SHEPHERDIA	canadensis	MT 10T	1.03	634
CERCOCARPUS	montanus	MT 10T	1.10	294	SPIRAEA	batulifolia	MT 10T	1.03	6240
CHRYSOTHAMNUS	nauseosus	MT 10T	1.03	2957	SPIRAEA	douglasii	MT 10T	1.03	706
CHRYSOTHAMNUS	viscidiflorus	MT 10T	1.03	122	SYMPHORICARPOS	occidentalis	MT 10T	1.10	5978
CORNUS	canadensis	MT 10T	1.31	2516	XEROPHYLLUM	tenax	MT 10T	2.89	1000
CRATAEGUS	douglasii	MT 10T	1.10	10079	YUCCA	elata	MT 10T	1.03	564
CRATAEGUS	succulenta	MT 10T	1.10	943	YUCCA	filamentosa	MT 10T	1.03	915
HOLODISCUS	discolor	MT 10T	1.10	1342	ROSA	woodsii	MT 2G	6.93	270
JUNIPERUS	monosperma	MT 110T	1.58	850	ARONIA	spicatum	MT 3T	0.56	2377
LARIX	occidentalis	MT 10T	0.92	1000	AGROSTIS	alba	MT 3T	0.56	600
LONICERA	involuta	MT 10T	1.03	3193	CAREX	aquatilis	MT 3T	0.56	1477
LONICERA	utahensis	MT 10T	1.03	3158	CAREX	athrostachya	MT 3T	0.56	5800
NOLINA	microcarpa	MT 10T	1.10	2310	CAREX	bebbii	MT 3T	0.56	7800
PHILADELPHUS	lewisii	MT 10T	1.10	5600	CAREX	lanuginosa	MT 3T	0.56	4046
PHYSOCARPUS	malvaceus	MT 10T	1.10	2188	CAREX	microptera	MT 3T	0.56	17050
PICEA	glauca v. densata	MT 10T	0.99	1000	CAREX	obnupta	MT 3T	0.56	3533
PINUS	contorta	MT 10T	0.92	3623	CAREX	praegracilis	MT 3T	0.56	7916
PINUS	flexilis	MT 10T	1.31	3645	DESCAMPSIA	cespitosa	MT 3T	0.56	8737
PINUS	edulis	MT 10T	1.31	2753	CAREX	utriculata (rostra)	MT 3T	0.56	1756
PINUS	jeffreyi	MT 10T	1.31	4724	DISTICHLIS	spicata	MT 3T	0.56	3170
POPULUS	sargentii	MT 10T	0.99	2552	GLYCERIA	striata	MT 3T	0.56	2925
POPULUS	angustifolia	MT 10T	0.99	5238	ELEOCHARIS	acicularis	MT 3T	0.66	4400
POPULUS	fremontii	MT 10T	0.99	4750	FESTUCA	idahoensis	MT 3T	0.56	1100
POPULUS	tremuloides	MT 10T	0.99	8013	HORDEUM	jubatum	MT 3T	0.71	349
POTENTILLA	fruticosa	MT 10T	1.16	2665	JUNCUS	ensifolius var. saxim	MT 3T	0.53	1170
PRUNUS	americana	MT 10T	1.10	7213	JUNCUS	torreyi	MT 3T	0.56	1174
PRUNUS	virginian	MT 10T	1.03	4478	SCIRPUS	microcarpus	MT 3T	0.66	471
PRUNUS	virginiana v. schube	MT 10T	1.10	548	SPARTINA	gracilis	MT 3T	0.56	2000
PURSHIA	tridentata	MT 10T	1.31	6920	ARTEMISIA	tridentata v. wyomingensis	MT 4T	0.45	79967
RHUS	glabra	MT 10T	1.16	937	ELEOCHARIS	sacicularis	MT 4T	0.63	200
RHUS	glabra v. cismontan	MT 10T	1.16	202	SPARTINA	gracilis	MT 4T	0.56	949
RHUS	trilobata	MT 10T	1.03	8690	POPULUS	tremuloides	MT 4X	4.83	
RIBES	cereum	MT 10T	1.03	5288	POPULUS	trichocarpa	MT 4X	4.83	121
ROSA	woodsii	MT 10T	0.99	1161	ARM	flo	MT VP	39.43	121
RUBUS	deliciosus	MT	1.10	284					

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Product	- Size	Total Sq ft	Unit \$	B/H -	Total	\$/sq ft	-	\$/lin ft
Sod-Pallets	4' x 2.5' x 3.5"	10	\$ 39.43	\$ 2.00	\$ 41.43	\$ 4.14	\$	10.36
Wetland Rollsods	16'x 3' x 2 "	50	\$ 169.15	\$ 6.00	\$ 175.15	\$ 3.50	\$	10.95
Fiber-Rolls	10' x 12" dia		\$ 172.01	\$ 6.00	\$ 178.01		\$	17.80
	10'x 16" dia		244.47	\$ 7.00	\$ 251.47		\$	25.15
Coir Inserts	4'x 12" dia		\$ 77.50	\$ 1.00	\$ 78.50		\$	19.63
<u>Installation Rates</u>		<u>\$/sq ft</u>	<u>\$/lin ft</u>					
Sod-Pallets & Wetland Rollsods		3-8						
Fiber-Rolls & Coir Inserts		5-15						

It takes about 8-12 weeks in the ponds to get Sod-Pallets, Wetland Rollsods and Fiber-Rolls to our shippable standards - 75% root coverage under the coir mats (no set standards for Fiber-Rolls yet)

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

PRODUCT	DEPTH	SPECIES	AVAILABLE	PRICE
Sod Pallets	Shallow	SCIMIC	26	39.43

Sod Pallets	Shallow	CARLAN/ELEACI	19	39.43
Sod Pallets	Shallow	DESCES/PUCNUT	40	39.43
Sod Pallets	Shallow	SALGEY/JUNBAL	17	39.43
Sod Pallets	Medium	SCIMIC	1	39.43
Sod Pallets	Medium	SCIMIC	2	39.43
Sod Pallets	Medium	SCIMAR	65	39.43
Sod Pallets	Medium	CARUTR/CARNEB	2	39.43
Sod Pallets	Medium	ALIPLA	16	39.43
Sod Pallets	Deep	SCIAVO	90	39.43
Sod Pallets	Deep	SAGLAT	98	39.43
Sod Pallets	Deep	ALIPAL	2	39.43
Sod Pallets	Deep	DISSPI/JUNEFF/SALVIR	1	39.43
Wetland Rollsods	Shallow	JUNCON/ELEPAL/CARNEB	20	169.15
Wetland Rollsods	Shallow	CARAQ/CARUTR/ELEPAL	6	169.15
Wetland Rollsods	Medium	CARBAR/SCIMIC	38	169.15

Wetland Rollsods	Medium	CARBAR/JUNEFF/SALVIR	20	169.15
Wetland Rollsods	Medium	CARNEB/JUNBAL	20	169.15
Wetland Rollsods	Medium	CARNEB/ELEPAL/JUNBAL	1	169.15
Wetland Rollsods	Medium	CARNEB/CARUTR/JUNBAL	10	169.15
Wetland Rollsods	Medium	CARUTR/CARLAN/JUNBAL	18	169.15
Wetland Rollsods	Medium	SALGEY/CARNEB/JUNBAL	10	169.15
Wetland Rollsods	Medium	SCIMIC	1	169.15

Wetland Rollsods	Medium	CARBAR/JUNBAL/ALIPLA	10	169.15
Wetland Rollsods	Deep	SCIAVO	4	169.15
Wetland Rollsods	Deep	CORSTO/AGRALB	20	169.15
Fiber-Rolls	Shallow	SALDRU/SALBOO/SALGEY	6	172.01
Fiber-Rolls	Medium	SALDRU/SALBEB/SALGEY/SALBOO	6	172.01
Fiber-Rolls	Medium		10	172.01

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

llow Species for sites under 0-4" of water
Medium Species for sites under 4"-12" of water
Deep Species for sites under 12"-18" of water

6 Letter CodeCommon Name

AGRALB Bentgrass
ALIPAL Spikerush
CARAQU Water Sedge
CARBAR Santa Barbara Sedge
CARLAN Wooly Sedge
CARNEB Nebraska Sedge
CARUTR/CARROS Beaked Sedge
CORSTO Redosier Dogwood
DESCES Tufted Hair Grass
DISSPI Saltgrass
ELEACI Least Spikerush
ELEPAL Creeping Spike Sedge
JUNBAL Baltic Rush

6 Letter CodeCommon Name

JUNCON Colorado Rush
JUNEFF Common Rush
PUCNUT Nuttall's Alkali
SAGLAT Broadleaf
SALBEB Babb's Willow
SALBOO Booth's Willow
SALDRU Drummond Willow
SALGEY Geyer's Willow
SALVIR Pickleweed
SCIA VO Hardstem Bulrush
SCIMAR Alkali Bulrush
SCIMIC Small-fruited

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **Land & Water Consulting, Inc.**, (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 81-0464439, P.O. Box 8027 Kalispell MT 59904, (406) 257-7200 and Fax (406) 257-7205.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION AND RENEWAL**

(a) This contract **SPB01-20P-D** shall take effect on August 20, 2001. The Contract shall terminate on August 30, 2005, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, or a period not to exceed two additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following services:

Contractors will reserve the option to attend regular FBC bimonthly meetings to present their ideas for critical VNRS and TMDL projects. The FBC is interested in hearing innovative ideas and new direction for these efforts that have a high potential to realize measurable improvements in water quality in Flathead Lake. Depending on grant funding cycles, ideas and projects the FBC agrees are critical will be prioritized for grant funding. The VNRS coordinator will develop the project team, approach, budget, and technical write up for selected grant applications. If the FBC is successful in receiving the grant funding, the FBC will award a contract to the contractor, team, or agency(s) responsible for the presenting the idea or project. The goal of this strategy is to offer grant funding as a financial incentive to contractors, teams, and agencies that have critical or innovative ideas that will result in measurable improvement in Flathead Lake water quality. Contractors will not be compensated for presenting their project ideas. In some cases, project development may be difficult due to limited grant funding or large project costs (e.g. sewerage portions of the Flathead Lake perimeter). The VNRS coordinator will research ways to fund these projects and propose alternative approaches to the FBC for final decision making whether to move forward or not with these projects. Timing between when projects are proposed and when projects are actually implemented often requires 6 to 12 months. In addition, the contractors for technical services should

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discuss potential projects and administrative needs with the VNRS Coordinator before presenting ideas or projects to the FBC.

Landscape Architect Services and Native Plants

Contractor is anticipated to provide, but not limited to, planning and layout for vegetative buffer zones along waterways in the Flathead Basin. Contractor will provide native plant stock (bare root and/or soil covered stock) for buffer stripes in order to mitigate nutrient water quality impacts from overland flow on waterways, stabilize eroding soils and banks, and provide natural vegetative habitat while attempting to maintain views on lake properties. Contractor is anticipated to potentially propose new and improved ways to promote, fund, and expand the number of buffer zones in the Flathead Basin, and especially around the Flathead Lake perimeter.

Air Quality Monitoring and Corrective Measures

Contractor will provide air quality monitoring and implementation of corrective measures that reduce the annual airborne nutrient load in Flathead Lake. Current estimates indicate that up to 30 percent of the annual nutrient load entering Flathead Lake is airborne or precipitation related. Contractor is anticipated to provide, but not limited to, ground up services related to monitoring and better quantifying the airborne and precipitation nutrient contribution into Flathead Lake, identification and implementation of new management strategies that reduce slash burning, wood heat, and fugitive dust suppression from roads, and other services as appropriate to better characterize and correct airborne nutrient sources. In some cases, education and partnerships with local authorities regulating air quality may be best suited for addressing local impacts.

Education Services

Education is an important part of an effective VNRS and TMDL program. Contractors in all service areas may have the opportunity to provide education services through future grant funding. In addition, the State is interested in education initiatives that have a high likelihood of citizens, businesses, or entities learning how to better manage natural resources and nonpoint source waste streams.

Grant Funding and No Guarantee of Project Funding

The State does not warranty or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not retained in the end.

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Allocation of Grant Funding

The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding (i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

Collaboration on Potential Projects

The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case by case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

(b) The State may withhold payments to the contractor if the contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

(c) U.S. Funds: All prices and payments must be in U.S. dollars.

6. ACCESS AND RETENTION OF RECORDS

(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

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(b) The contractor agrees to create and retain records supporting the services rendered (or supplies delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

9. HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused

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by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles leased, hired, or borrowed by the contractor.

Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence or the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: 1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers, or; 2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

Contractor's Registration #53080

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

(b) the State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

CLEAN-UP

The contractor shall:

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- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

19. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 2002.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

20. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Roger Noble
Land & Water Consulting, Inc.
PO Box 8027
Kalispell MT 59904
Phone: (406) 257-7200
Fax: (406) 257-7205

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529

23. MEETINGS

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Department of Administration. The contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings (two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

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(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.


26. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

LAND & WATER CONSULTING, INC.
P.O. BOX 8027
KALISPELL MT 59904
FEDERAL ID # 81-0464439

BY: ROGER NOBLE
PRINCIPAL/OWNER


BY: 
PENNY MOON, Contracts Officer

BY:

DATE: 10/15/01

DATE: 10/15/01

Approved as to legal content:



Legal Counsel
Department of Administration

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

TEM	RATE	ITEM	RATE	
<u>Personnel</u>		<u>Equipment</u>		
Project Manager/Sr. Scientist/ASLA	\$75.60/hr	CPU Time	\$21.00/hr	
Project Engineer / Scientist	\$67.20/hr	Modeling / Specialized Software	\$21.00/hr	
Staff Scientist / Engineer	\$59.85/hr	Photoionization Detector	\$52.50/day	
Engineer, EIT	\$54.60/hr	Landfill-gas Meter	\$52.50/day	
Environmental Technician	\$47.25/hr	LEL / O2 Meter	\$31.50/day	
Technical Drafting with AutoCAD system	\$57.75/hr	Oil /Water Interface Probe	\$46.75/day	
3-Person Survey Crew (with Total Station)	\$120.75/hr	pH, Temp., Cond. DO Meter	\$42.00/day	
2-Person Survey Crew (with Total Station)	\$99.75/hr	Turbidimeter	\$31.50/day	
3-Person Survey Crew (w/PLS w/Total Station)	\$136.50/hr	Groundwater Sampling Trailer	\$210.00/day	
2-Person Survey Crew (w/PLS w/Total Station)	\$115.50/hr	(Grundfos Pump, Generator & Decon. Equip).		
GIS Specialist	\$57.75/hr	Portable Generator & Grundfos Controller	\$157.50/day	
Sr. Clerical	\$44.10/hr	Portable Generator	\$52.50/day	
Clerical	\$33.60/hr	Hach Test Kit	\$31.50/day	
TMDL National Professional	\$131.25/hr	Petro Flag Samples	\$23.10/samp.	
		12v Sample Pumps	\$31.50/day	
<u>Travel</u>		Water/ Soil Sampling Decontamination	\$10.50/sample	
Mileage	\$.42/mile	Groundwater Bailers	\$8.40/each	
Mileage (heavy duty truck)	\$.53/mile	Vinyl Tubing	\$.79/foot	
Pickup Truck	\$31.50/day+mileage	Filters	\$21.00/each	
Per Diem	\$30.45/day	Electric Water Level Tape	\$31.50/day	
		Transducer Water Level Data Logger	\$131.25/day	
<u>Communications</u>			\$315.00/wk	
Copies (in-house black & white)	\$0.11/page		\$787.50/mo.	
Copies (in-house color 8.5" x 11")	\$1.05/page	Flow Meter (Open Channel Meter)	\$52.50/day	
Copies (in-house color 11" x 17")	\$2.10/page	Cut Throat Flume	\$31.50/day	
Long Distance Faxes	\$1.05/page	10 HP Water Pump (425 gpm capacity)	\$157.50/day	
Microfiche Prints	\$0.53/page	Pitot Tube Closed Channel Flow Meter	\$31.50/day	
CD Date Copy	\$10.50/CD	Air Pump (low volume)	\$31.50/day	
		Peristaltic Pump	\$31.50/day	
<u>Plotting</u>		Whale Purge Pump	\$31.50/day	
Size	Linework	Rastor	Level C Protective Clothing	\$136.50/day
A - 8.5"x11"	\$2.10	\$3.15	Total Station Survey Equipment	\$105.00/day
B- 11"x17"	\$5.25	\$7.35	Level Line Survey Equipment	\$31.50/day
C- 17"x24"	\$8.40	\$10.50	Trimble Geoexplorer II GPS Unit	\$52.50/day
D - 24"x36"	\$10.50	\$15.75	Leica SR530 Survey Grade GPS	\$525.00/day
E - 36"x48"	\$15.75	\$21.00	Laser Level	\$42.00/day
F - Oversize	\$15.75+	\$26.25+	Magnetic Locator	\$31.50/day
		Raft	\$52.50/day	
		Misc. Expenses & Consumable Supplies	Cost+15%	

Hourly rates for professional personnel and equipment rates are shown in Table 5.1.
Construction equipment rates and plant materials are included in Appendix B.

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Table B.1
Construction Equipment Rates

<u>Equipment</u>	<u>Rate*</u> (hourly)
Dozers	
D8K-77V13898 U-blade and Rippers	\$125.00
D7G-92V7937 U-blade and Rippers	\$95.00
D6H-3YJ00248 Tilt Angle Blade and Grapple	\$95.00
D6D-4X3441 Title Angle Blade and Winch	\$80.00
D5H-8RC04133 Six-way Angle Blade and Drawbar	\$80.00
D3 Six-way Angle Blade and Drawbar	\$55.00
Excavators	
330 Cat-5YM1681 1%2 d Bucket with Thumb	\$125.00
235 Cat-32K3159 1% d Bucket with Thumb-rock Grapple	\$120.00
235 Cat-32K3383 1' /8 d Bucket with Thumb	\$120.00
229 Cat-1 CF545 1 % d Bucket with Thumb	\$110.00
200 Hitachi	\$110.00
120 Hitachi	\$85.00
3 100 John Deere Backhoe 4x4 Extended Base	\$60.00
Miscellaneous Equipment	
518 Cat Skidder 55U536-Exco 212 Swing Grapple-winch	\$70.00
140G Cat Motor Grader-ripper, 14' Moldboard	\$80.00
CA25PD D a ac Vibrato Compactor 84" Drum	\$70.00
CP323 Cat Vibrato Compactor 48" Pad ft Drum	\$60.00
950 Front-end Loader 81J13413 3 yd Bucket-grapple Rake	\$70.00
Dump Trucks	\$65.00
750 CFM Gardner Denver Air Compressor	\$55.00
185 CFM Joy Air Compressor	\$50.00
Ingersol Rand 750 CFM Self-contained Rock Drill	\$135.00
4000 Gallon Water Truck-Off Road	\$65.00
Trailers and Support Equipment	\$20.00**

*Rates are negotiable.

**Estimated cost; may vary depending on equipment.

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Plant Material Costs		
Native Sub-Shrubs and Trees		
Botanical Name	Common Name	Cost*
Abies grandis	Grand Fir	\$0.26
Abies lasiocarpa	Alpine Fir	\$0.54
Acer glabrum	Rocky Mountain Maple	\$0.82
Alnus rubra	Red Adler	\$0.82
Amelanchier alnifolia	Juneberry	\$0.64
Arctostaphylos uva-ursi	Kinnikinnick	\$0.75
Betula papyrifera	Paper Birch	\$0.35
Ceanothus velutinus	Snow Brush	\$0.54
Cercocarpus ledifolius	Curl-leaf Mountain Mahogany	\$0.54
Clematis ligusticifolia	Western Virgin's Bower	\$0.75
Corpus stolonifera	Red Osier Dogwood	\$0.35
Crataegus columbiana	Columbia Hawthorn	\$0.49
Elaeagnus commutata	Silverberry	\$0.36
Juniperus communis	Common Juniper	\$0.34
Juniperus scopulorum	Rocky Mountain Juniper	\$0.54
Larix occidentalis	Western Larch	\$0.39
Mahonia repens	Creeping Mahonia	\$0.56
Philadelphus lewisii	Lewis Mock Orange	\$0.91
Picea engelmannii	Engelmann Spruce	\$0.27
Pinus contorta latifolia	Lodgepole Pine	\$0.23
Pinus flexilis	Limber Pine	\$0.41
Pinus ponderosa	Western Yellow Pine	\$0.25
Populus tremuloides	Quaking Aspen	\$0.76
Potentilla fruticosa	Bush Cinquefoil	\$0.39
Prunus americana	Native American Plum	\$0.40
Prunus virginiana	Common chokeberry	\$0.34
Pseudotsuga menziesii	Blue Douglas Fir	\$0.22
Purshia tridentate	Antelope Bitter-brush	\$0.39
Rhus gabra	Smooth Sumac	\$0.36
Rosa woodsii	Woods Rose	\$0.47
Salix eriocephala	Diamond Willow	\$0.58
Salix exigua	Sandbar Willow	\$0.58
Shepherdia argentea	Silver Buffaloberry	\$0.53
Symphoricarpos alba	Snowberry	\$0.48
Thuja plicata	Western Red Cedar	\$0.61
Tsuga heterophylla	Western Hemlock	\$0.61
Tsuga mertensiana	Mountain Hemlock	\$0.55
" Costs estimate is based on <u>quantity</u> of 500+; <u>seedlings</u> 6"-12"		
Native Grasses		
Botanical Name	Common Name	Price Estimate
Agropyron spicatum	Bluebunch Wheatgrass	\$7 - \$14/ bulk pound
Calamagrostis rubescens	Pine grass	price based on availability
Carex geyeri	Elk Sedge	price based on availability
Festuca idahoensis	Idaho Fescue	\$7 - \$18 / bulk pound
Festuca scabrella	Rough Fescue	\$10 - \$15/ bulk pound
Oryzopsis asperifolia	Rough-Leaved Rice grass	\$15- \$25/ bulk pound

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **Hydrotech Water Resource Consultants**, (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 81-0506811, 2031 11th Ave Suite 211, Helena MT 59601, (406) 443-8577 and Fax (406) 443-5979.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION AND RENEWAL**

(a) This contract **SPB01-20P-E** shall take effect on August 20, 2001. The Contract shall terminate on August 30, 2005, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, for a period not to exceed two additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following services:

Contractors will reserve the option to attend regular FBC bimonthly meetings to present their ideas for critical VNRS and TMDL projects. The FBC is interested in hearing innovative ideas and new direction for these efforts that have a high potential to realize measurable improvements in water quality in Flathead Lake. Depending on grant funding cycles, ideas and projects the FBC agrees are critical will be prioritized for grant funding. The VNRS coordinator will develop the project team, approach, budget, and technical write up for selected grant applications. If the FBC is successful in receiving the grant funding, the FBC will award a contract to the contractor, team, or agency(s) responsible for the presenting the idea or project. The goal of this strategy is to offer grant funding as a financial incentive to contractors, teams, and agencies that have critical or innovative ideas that will result in measurable improvement in Flathead Lake water quality. Contractors will not be compensated for presenting their project ideas. In some cases, project development may be difficult due to limited grant funding or large project costs (e.g. sewerage portions of the Flathead Lake perimeter). The VNRS coordinator will research ways to fund these projects and propose alternative approaches to the FBC for final decision making whether to move forward or not with these projects. Timing between when projects are proposed and when projects are actually implemented often requires 6 to 12 months. In addition, the contractors for technical services should

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

discuss potential projects and administrative needs with the VNRS Coordinator before presenting ideas or projects to the FBC.

Environmental and Watershed Support Services

Contractor will provide general environmental and watershed support for services that reduce the nutrient load in Flathead Lake from upstream tributaries, the lake perimeter, groundwater, and local watershed scale impacts. Contractor is anticipated to provide a host of services, but not limited to environmental permitting, water quality monitoring, watershed coordination, watershed analysis, watershed restoration planning, watershed restoration oversight, GIS/CADD support, data management, wetland delineation and restoration, stream restoration, water rights, hydrogeologic services and aquifer testing, laboratory analysis, fishery / aquatic life services, forestry services, agricultural management services, and other services as appropriate. FBC watershed projects are ongoing and more are anticipated in the Flathead Basin. The State assumes that the Contractor will help support primarily watershed efforts.

Education Services

Education is an important part of an effective VNRS and TMDL program. Contractors in all service areas may have the opportunity to provide education services through future grant funding. In addition, the State is interested in education initiatives that have a high likelihood of citizens, businesses, or entities learning how to better manage natural resources and nonpoint source waste streams.

Grant Funding and No Guarantee of Project Funding

The State does not warranty or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not retained in the end.

Allocation of Grant Funding

The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding (i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

Collaboration on Potential Projects

The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case by case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

(b) the State may withhold payments to the contractor if the contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

(c) U.S. Funds: All prices and payments must be in U.S. dollars.

6. ACCESS AND RETENTION OF RECORDS

(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

(b) The contractor agrees to create and retain records supporting the services rendered (or supplies delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

9. HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles leased, hired, or borrowed by the contractor.

Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence or the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: 1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers, or; 2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

Contractor's Registration #28532

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

(b) the State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

CLEAN-UP

The contractor shall:

- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeree objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

19. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 2002.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

20. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Jack G. Thomas
Hydrotech Water Resource Consultants
1617 Euclid Ave Suite 1
Helena MT 59601
Phone: (406) 443-8577
Fax: (406) 443-5979

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529

23. MEETINGS

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Department of Administration. The contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

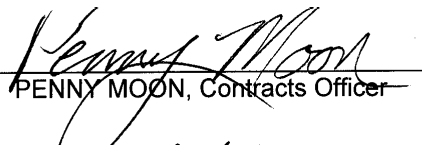
FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

26. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

HYDROTECH WATER RESOURCE
CONSULTANTS
1617 EUCLID AVE SUITE 1
HELENA MT 59601
FEDERAL ID # 81-0506811

BY: 
PENNY MOON, Contracts Officer


BY: JACK G THOMAS, PRESIDENT

BY:

DATE: 9/15/01

DATE: 8/16/01

Approved as to legal content:



Legal Counsel 8/30/01
Department of Administration

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Project Team Personnel

Project Manager, Senior Hydrologist	Jack Thomas	\$80
Hydrologist II / Biologist	Dick Blodnick	\$65
Professional Engineer	Paul LaVigne	\$70
Senior Hydrogeologist	David Baldwin	\$75
Senior Water Rights Specialist	David Schmidt	\$75
Hydrologist I / Vegetative Specialist	Steve Tralles	\$55
Construction Manager'	Richard Thumma	\$75
Administrative Assistance - Billing, Word Processing, etc.	Lisa Holshue	\$40

Professional/Scientific Equipment, Subcontractors and Other Items

Description	Rate
Mileage	State Rates - car; 45• / mi - 4X4 PU
Per Diem	State Rates
Lodging	State Rates
Photocopies	10• / copy (B&W)
Telephone	At cost / As,billed
Postage	At cost
Subcontractors (as needed)	As billed - no markup (\$70-80/hr)
Mapping Grade GPS	\$150 / day
Hand-held GPS	\$40 / day
Swoffer Current Meter	\$50 / day
Water level probe	\$50 / day
Laser survey equipment	\$50 / day
Pump test equipment	rental cost +10%
Other needed equipment	rental cost +10%

'Construction Manager will be billed only when the specified individual is performing construction management services and is not operating machinery.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

CONSTRUCTION EQUIPMENT AND OPERATOR RATES:

ALL EQUIPMENT RATES QUOTED BELOW INCLUDE OPERATOR. AS STATED IN RFP, "HEAVY EQUIPMENT RATES WILL BE NEGOTIATED ON A PROJECT BY PROJECT BASIS FOR THE TYPE OF EQUIPMENT, PREVAILING RATES, AND STATUTORY REQUIREMENTS". RATES QUOTED BELOW ARE RATES FOR PRIVATE CLIENTS THAT HAVE BEEN BILLED IN THE RECENT PAST AND DO NOT INCLUDE MARK-UP FOR PREVAILING WAGES, ETC. (E.G.DAVIS-BACON ACT).

<i>CATEGORY</i>	<i>EQUIPMENT²</i>	<i>RATE</i>
EXCAVATORS	KOMATSU PC 200	\$100/HR
	KOMATSU PC 150	\$ 95/HR
	HITACHI EX200	\$100/HR
	JOHN DEERE 200LC	\$100/HR
DUMP TRUCKS	INTERNATIONAL # 1	\$ 60/HR
	FORD	\$ 60/HR
	FREIGHTLINER	\$ 60/HR
	INTERNATIONAL #2	\$ 60/HR
LOADERS	KOMATSU WA 320	\$ 75/HR
	CASE 580 SUPER L	\$ 65/HR
	ASV 4520 POSITRAC	\$ 60/HR
BACKHOE/LOADER	CASE 580 SUPER L	\$ 65/HR
DOZERS	JOHN DEER 750B	\$ 70/HR
	KOMATSU 85	\$100/HR
GRADER	JOHN DEERE 770	\$ 70/HR
WATER TRUCK	FORD-2000 GAL	\$ 50/HR
LIGHT EQUIPMENT	VARIABLE	AS NEGOTIATED

² All equipment will be as listed or equivalent if that specific machine is not available at time of construction.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

NOTE: This contract with Water Consulting has been canceled effective September 1, 2003.

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **Water Consulting Inc.**, (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 81-0507597, 120 South 5th St, Suite 201 PO Box 981 Hamilton MT 59840, (406) 363-2828 and Fax: (406) 363-5322.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION AND RENEWAL

(a) This contract **SPB01-20P-F** shall take effect on August 20, 2001. The Contract shall terminate on August 30, 2003, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, for a period not to exceed four additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

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Contractor agrees to provide to the State the following services:

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The State does not warranty or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not be retained in the end.

Allocation of Grant Funding

The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding

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(i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

Collaboration on Potential Projects

The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case by case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

(b) the State may withhold payments to the contractor if the contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

(c) U.S. Funds: All prices and payments must be in U.S. dollars.

6. ACCESS AND RETENTION OF RECORDS

(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

(b) The contractor agrees to create and retain records supporting the services rendered (or supplies delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

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7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

9. HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

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Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence or the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: 1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers, or; 2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department

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of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

Contractor's Registration #53040

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

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(b) the State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

CLEAN-UP

The contractor shall:

- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

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18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

19. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 2002.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

20. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Clint Brown

Water Consulting Inc.

PO Box 981

Hamilton MT 59840

Phone: (406) 363-2828

Fax: (406) 363-5322

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529

23. MEETINGS

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Department of Administration. The contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

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26. EXECUTION

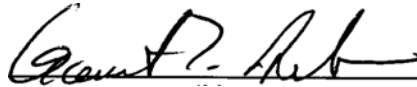
The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

WATER CONSULTING INC.
P.O. BOX 981
HAMILTON MT 59840
FEDERAL ID # 81-0507597


BY:


Penny Moon, Contracts Officer



DATE: 9/6/01

Approved as to legal content:


Legal Counsel 8/30/01
Department of Administration

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Table 5
Equipment Rates for Preferred WCI Contractors*
Cost in Price per Day (\$)

Equipment Task	Kirby Excavating	Rod Frost Contracting	Average Cost/Day
Mobilization	400	500	450
D-8 Bulldozer	1,250	1,500	1,375
CAT 320	960	880	920
CAT 315	880	720	800
Posi Track	500	520	510
Dump Truck (10-yard)	480	480	480
Loader (3-yard)	720	720	720
Backhoe	500	500	500
Tree/Shrub Spade	250	250	250

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WCI will honor the following costs for the FBC through December 31, 2002. Rates are associated to duties and professional standing within our firm. The rates for the FBC are:

Senior Hydrologist/Hydrogeologist	\$65
Hydrologist/Hydrogeologist	\$60
• Professional Engineer	\$68
• Fisheries Biologist	\$50
Wetland Ecologist	\$50
Project Manager	\$55
Senior Hydrological Technician	\$50
• Hydrological Technician	\$45
Word Processing	\$25
• GIS / CAD Services (drafting)	\$48
Total Station Survey	\$100/hr. (unit + 2 person crew)
• GPS Survey (survey grade unit)	\$125/hr. (includes equipment)
Billings Support	\$20
• Photocopies (Black & White regular)	\$.05
Photocopies (Black & White 11X17)	\$.10
• Photocopies (Color regular)	\$.75
Photocopies (Color 11X17)	\$1.00
• Telephone Calls	As billed by carrier
• Computer Time	Included in Hourly Rate
Postage	cost of service
• Per Diem	State of MT rates
Mileage (car)	\$.35
Mileage (4X4)	\$.40
Equipment Costs (not owned by firm)	price of rental fee
Sub-contractor Billing	3% mark up fee
Heavy Equipment/Sub-contractor Fees	See Section 3.5 for detail

WCI owns and maintains a majority of its' field equipment with the exception of a survey grade GPS unit. Rental fees will be billed accordingly without mark-up. As noted above, the prices quoted will be honored by WCI through December 31, 2002. Heavy Equipment costs will be negotiated depending on whether or not Davis-Bacon (Prevailing) Wager Rates apply to the specific task order.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **RLK Hydro Inc.**, (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 81-0508415, 484 North Main St PO Box 1579 Kalispell MT 59903, (406) 752-2025 and Fax: (406) 257-4125.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION AND RENEWAL**

(a) This contract **SPB01-20P-G** shall take effect on August 20, 2001. The Contract shall terminate on August 30, 2005, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, for a period not to exceed two additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following services:

Contractors will reserve the option to attend regular FBC bimonthly meetings to present their ideas for critical VNRS and TMDL projects. The FBC is interested in hearing innovative ideas and new direction for these efforts that have a high potential to realize measurable improvements in water quality in Flathead Lake. Depending on grant funding cycles, ideas and projects the FBC agrees are critical will be prioritized for grant funding. The VNRS coordinator will develop the project team, approach, budget, and technical write up for selected grant applications. If the FBC is successful in receiving the grant funding, the FBC will award a contract to the contractor, team, or agency(s) responsible for the presenting the idea or project. The goal of this strategy is to offer grant funding as a financial incentive to contractors, teams, and agencies that have critical or innovative ideas that will result in measurable improvement in Flathead Lake water quality. Contractors will not be compensated for presenting their project ideas. In some cases, project development may be difficult due to limited grant funding or large project costs (e.g. sewerage portions of the Flathead Lake perimeter). The VNRS coordinator will research ways to fund these projects and propose alternative approaches to the FBC for final decision making whether to move forward or not with these projects. Timing between when projects are proposed and when projects are actually implemented often requires 6 to 12 months. In addition, the contractors for technical services should

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discuss potential projects and administrative needs with the VNRS Coordinator before presenting ideas or projects to the FBC.

Environmental and Watershed Support Services

Contractor will provide general environmental and watershed support for services that reduce the nutrient load in Flathead Lake from upstream tributaries, the lake perimeter, groundwater, and local watershed scale impacts. Contractor is anticipated to provide a host of services, but not limited to environmental permitting, water quality monitoring, watershed coordination, watershed analysis, watershed restoration planning, watershed restoration oversight, GIS/CADD support, data management, wetland delineation and restoration, stream restoration, water rights, hydrogeologic services and aquifer testing, laboratory analysis, fishery / aquatic life services, forestry services, agricultural management services, and other services as appropriate. FBC watershed projects are ongoing and more are anticipated in the Flathead Basin. The State assumes that the Contractor will help support primarily watershed efforts.

Education Services

Education is an important part of an effective VNRS and TMDL program. Contractors in all service areas may have the opportunity to provide education services through future grant funding. In addition, the State is interested in education initiatives that have a high likelihood of citizens, businesses, or entities learning how to better manage natural resources and nonpoint source waste streams.

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The State does not warranty or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not retained in the end.

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The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding (i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this

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funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

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The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case-by-case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

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(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

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The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

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The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

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Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional

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Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence or the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: 1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers, or; 2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all

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administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

Contractor's Registration #12733

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

(b) the State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

CLEAN-UP

The contractor shall:

- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

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19. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 2002.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

20. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Marc M. Spratt
RLK Hydro Inc.
PO Box 1579
Kalispell MT 59903
Phone: (406) 752-2025
Fax: (406) 257-4125

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529

23. MEETINGS

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Department of Administration. The contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

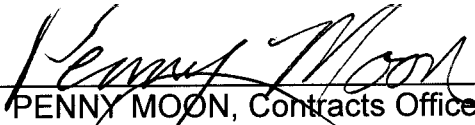
FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

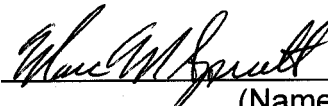
26. EXECUTION

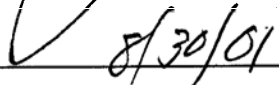
The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

RLK HYDRO INC
P.O. BOX 1579
KALISPELL MT 59903
FEDERAL ID #81-0508415


BY: 
PENNY MOON, Contracts Officer

BY:  President
(Name/Title)

DATE:  8/30/01

BY: 8/27/01

Approved as to legal content


Legal Counsel 8/30/01
Department of Administration

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Cost

The cost for RLK Hydro, Inc. to complete work within both sections 2.4 and 2.7 of Area 1: Technical Services for the Flathead Basin Commission will be based on Table 4.

Table 4. Time, instrument, and material costs for contracts awarded to RLK Hydro.

<u>Job Description</u>	<u>Rate Per Hour</u>
Senior <u>Hydrologist</u>	\$85.00
Senior <u>Engineer</u>	\$85.00
Staff <u>Engineer</u>	\$50.00
<u>Design Engineer</u>	\$60.00
Staff Hydrogeologist	\$62.00
Plant <u>Ecologist</u>	\$50.00
<u>Computer-Aided Drafting</u>	\$35.00
Clerical	\$25.00
<u>Expenses</u>	<u>Cost + 10%</u>
<u>Materials</u>	<u>Cost + 15%</u>
Subcontractors	<u>Cost + 10%</u>
Per Diem	<u>\$75/person/day</u>
Meals	<u>\$42/person/day</u>
Mileage	\$.40 per mile
<u>Equipment Rental</u>	<u>Rate Per Day</u>
Pygmy Flow Meter	\$60.00
Price AA Meter	\$60.00
Specific Conductance H Meter	\$9.00
Transit	\$15.00
Water Level Logger	\$41.00
Transducer	\$30.00
Altimeter	\$18.00
Groundwater Flow Meter	\$110.00
Hydrolab	\$280.00

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Heavy equipment costs. Rates include equipment and operator.

<u>Type</u>	Size	Number		Rate
Front End Loader	3.5 cubic and	1	CAT 938G	\$75/hr
Front End Loader	2.5 cubic and	1	CAT 1T28	\$65/hr
Backhoe	Wheeled	4	CASE 580L	\$55/hr
Backhoe	Wheeled	3	CASE 580K	\$55/hr
Trackhoe	Track mounted	6	JD490-990	\$125/hr
Water Truck	4000 al	1		\$55/hr
Dump Truck	12 cubic and	4		\$55/hr
End Dump Truck	30 cubic and	1		\$75/hr
Bell Dump Truck	20 cubic and	2		\$75/hr
Skid steer	Wheeled	2		\$50/hr
Lowboy		1		\$60/hr
Small Excavator	Track mounted	1		\$75/hr

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **Camp Dresser & McKee, Inc.**, (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 04-2473650, 34 North Last Chance Gulch Suite 104 Helena MT 59601, (406) 449-2121 and Fax: (406) 449-6768.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION AND RENEWAL**

(a) This contract **SPB01-20P-H** shall take effect on September 7, 2001. The Contract shall terminate on August 30, 2005, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, for a period not to exceed two additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following services:

Contractors will reserve the option to attend regular FBC bimonthly meetings to present their ideas for critical VNRS and TMDL projects. The FBC is interested in hearing innovative ideas and new direction for these efforts that have a high potential to realize measurable improvements in water quality in Flathead Lake. Depending on grant funding cycles, ideas and projects the FBC agrees are critical will be prioritized for grant funding. The VNRS coordinator will develop the project team, approach, budget, and technical write up for selected grant applications. If the FBC is successful in receiving the grant funding, the FBC will award a contract to the contractor, team, or agency(s) responsible for the presenting the idea or project. The goal of this strategy is to offer grant funding as a financial incentive to contractors, teams, and agencies that have critical or innovative ideas that will result in measurable improvement in Flathead Lake water quality. Contractors will not be compensated for presenting their project ideas. In some cases, project development may be difficult due to limited grant funding or large project costs (e.g. sewerage portions of the Flathead Lake perimeter). The VNRS coordinator will research ways to fund these projects and propose alternative approaches to the FBC for final decision making whether to move forward or not with these projects. Timing between when projects are proposed and when projects are actually implemented often requires 6 to 12 months. In addition, the contractors for technical services

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should discuss potential projects and administrative needs with the VNRS Coordinator before presenting ideas or projects to the FBC.

Comprehensive and Large Scale TMDL Services

Contractor will provide comprehensive and large-scale TMDL services. Furthermore, the State is seeking project ideas from a pool of national experts and to leverage experience from working on other large scale TMDL projects in order to implement actions that have a high probability of realizing measurable improvements in Flathead Lake water quality. The scale of Flathead Lake, magnitude of the water quality impacts caused from nutrients, and need to move quickly requires large-scale corrective actions. The Contractor must have offices in other locations of the US and identify a pool of company experts, show experience implementing large scale TMDL or related actions, show experience working with communities on large scale projects, demonstrate access to agency and government personnel with emphasis in the Washington DC area, and demonstrate a keen ability to identify potential sources of funding for large scale TMDL and construction projects.. Example projects could include, but are not limited to: an impact analysis for sewerage, partial sewerage, or not sewerage Flathead Lake; design of a waste water treatment facilities for unsewered basin areas or hooking up to existing treatment plants; developing a position paper on flow alteration impacts in Flathead Lake from Hungry Horse Dam and recommendation for corrective actions; and developing a regional initiative to improve air quality.

Education Services

Education is an important part of an effective VNRS and TMDL program. Contractors in all service areas may have the opportunity to provide education services through future grant funding. In addition, the State is interested in education initiatives that have a high likelihood of citizens, businesses, or entities learning how to better manage natural resources and nonpoint source waste streams.

Grant Funding and No Guarantee of Project Funding

The State does not warrant or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not be retained in the end.

Allocation of Grant Funding

The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently

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and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding (i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

Collaboration on Potential Projects

The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case-by-case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

(b) the State may withhold payments to the contractor if the contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

(c) U.S. Funds: All prices and payments must be in U.S. dollars.

6. ACCESS AND RETENTION OF RECORDS

(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

(b) The contractor agrees to create and retain records supporting the services rendered (or supplies delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

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7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

9. HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the negligent acts or omissions of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: Except for Worker's Compensation and Professional Liability Insurance the State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

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Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles leased, hired, or borrowed by the contractor.

Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence or the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: 1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers, or; 2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

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Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative

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rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

Contractor's Registration #10346

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The

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contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

(b) The State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

(c) It is understood and agreed that the contractor's use of its proprietary computer software, methodology, procedures or other proprietary information in connection with an assignment shall not give the State or anyone else any rights with respect to such proprietary computer software, methodology, procedures or other proprietary information, and the State agrees to keep confidential and not disclose such proprietary information to any third parties.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

CLEAN-UP

The contractor shall:

- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

19. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 2002.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

20. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Randy L. Huffsmith
Camp Dresser & McKee, Inc.
34 North Last Chance Gulch Suite 104
Helena MT 59601
Phone: (406) 449-2121
Fax: (406) 449-6768

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529

23. MEETINGS

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Department of Administration. The contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

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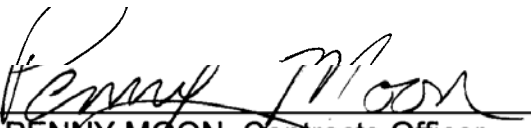
(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

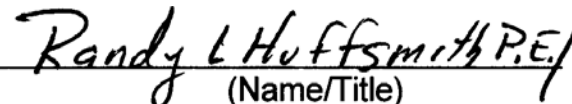
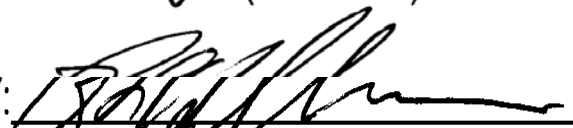
26. EXECUTION

The parties through their Authorized agents have executed this contract on the dates set out below.


MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

CAMP DRESSER & MCKEE
34 LAST CHANCE GULCH SUITE 104
HELENA MT 59601P
FEDERAL ID #04-2473650

BY: 
PENNY MOON, Contracts Officer
Sept. 17, 2001

BY:  Randy L. Huffsmith P.E./Principal
(Name/Title)
BY: 

Approved as to legal content

 9/17/01

Legal Counsel 8/30/01
Department of Administration

Section 5 Cost

A schedule of CDM rates for other direct charges (ODCs) is presented in Table 5-1. CDM direct labor

cost ranges for January 1, 2001 to December 31, 2001 is shown in Table 5-2 on the next page.

Table 5-1 CDM Schedule of Rates for ODCs

Other Direct Costs	Amount
Telephone Calls	Actual Cost
Computer Time	No Time
Postage	Actual Cost
Per Diem	State Rates
Mileage	0.345/mile
Subcontractor	Actual Cost
Equipment	Actual Cost
Faxes	1.00/page
Photocopies	0.10/page
Color Copies	2.00/page

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

CLASS	LABOR CATEGORIES	GRADE	BILLIN	RATES
			LOW	HIGH
ENEWSCEWENWR	ENGINEER/SCIENTIST	1	48.00	66.00
ENEV/SCEV/ENWR	ENGINEER/SCIENTIST	2	54.00	75.00
ENEV/SCEV/ENWR	ENGINEER/SCIENTIST	3	66.00	84.00
ENEWSCEWENWR	ENGINEER/SCIENTIST	4	66.00	105.00
ENEV/SCEV/ENWR	ENGINEER/SCIENTIST	5	72.00	111.00
ENEWSCEWENWR	ENGINEER/SCIENTIST	6	84.00	123.00
ENEWSCEWENWR	ENGINEER/SCIENTIST	7	108.00	153.00
ENEWSCEWENWR	ENGINEER/SCIENTIST	8	120.00	186.00
ENEWSCEWENWR	ENGINEER/SCIENTIST	9	111.00	195.00
ENEV/SCEV/ENWR	ENGINEER/SCIENTIST	0	150.00	195.00
ENCH	CHEMICAL ENGINEER	3	72.00	84.00
ENCH	CHEMICAL ENGINEER	4	72.00	105.00
ENEL/ENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	1	48.00	66.00
ENEL/ENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	2	54.00	75.00
ENEL/ENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	3	66.00	84.00
ENEL/ENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	4	66.00	105.00
ENEUENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	5	72.00	111.00
ENEL/ENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	6	105.00	138.00
ENEL/ENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	7	111.00	153.00
ENEL/ENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	8	117.00	195.00
ENEL/ENME/ENST	ELECTRICAL MECHANICAL STRUCT. ENG.	9	138.00	195.00
ARGN	ARCHITECT	1	42.00	57.00
ARGN	ARCHITECT	2	45.00	63.00
ARGN	ARCHITECT	3	51.00	69.00
ARGN	ARCHITECT	4	57.00	72.00
ARGN	ARCHITECT	5	66.00	81.00
ARGN	ARCHITECT	6	75.00	114.00
ARGN	ARCHITECT	7	117.00	135.00
ARGN	ARCHITECT	8	117.00	150.00
ITMS	INTERNAL COMP. ANALYST	6	72.00	78.00
ITMS	INTERNAL COMP. ANALYST	8	81.00	88.50
CNRP	CONSTRUCTION REPRESENTATIVE	7	87.00	99.00
PMPM	CONSTRUCTION MGMT	7	102.00	111.00
LIBRARIAN	LIBRARIAN	1	45.00	63.00
TEIN/ENIN	INSTRUMENTATION ENGINEER	4	66.00	90.00
TEIN/ENIN	INSTRUMENTATION ENGINEER	5	72.00	102.00
TEIN/ENIN	INSTRUMENTATION ENGINEER	6	108.00	129.00
GSSP	GIS TECHNICIAN	2	54.00	69.00
GSSP	GIS TECHNICIAN	3	57.00	75.00
GSSP	GIS TECHNICIAN	4	60.00	75.00
GSSP	GIS TECHNICIAN	5	60.00	78.00
GSSP	GIS TECHNICIAN	6	63.00	112.50
MGGN	LAB MANAGER	5	72.00	84.00
TEGN	LAB TECHNICIAN	1	30.00	42.00

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CLASS	LABOR CATEGORIES	GRADE	BILLIN	RATES
			LOW	HIGH
TEGN	LAB TECHNICIAN	2	33.00	43.50
TEGN	LAB TECHNICIAN	3	36.00	51.00
TEGN	LAB TECHNICIAN	4	39.00	52.50
TEGN	LAB TECHNICIAN	5	42.00	54.00
TEGN	LAB TECHNICIAN	6	45.00	57.00
TEGN	LAB TECHNICIAN	7	48.00	69.00
DNDF	DESIGNER/DRAFTER	1	30.00	39.00
DNDF	DESIGNER/DRAFTER	2	42.00	49.50
DNDF	DESIGNER/DRAFTER	3	45.00	52.50
DNDF	DESIGNER/DRAFTER	4	54.00	58.50
DNDF	DESIGNER/DRAFTER	5	57.00	69.00
DNDF	DESIGNER/DRAFTER	6	63.00	78.00
DNDF	DESIGNER/DRAFTER	7	75.00	88.50
DNDF	DESIGNER/DRAFTER	8	78.00	100.50
FNCA	CONTRACT FINANCIAL MANAGER	8	81.00	100.50
FNCA	CONTRACT ADMINISTRATOR	7	39.00	66.00
FNSA	FINANCIAL CLERK	3	36.00	46.50
ASWP	WORD PROCESSOR	2	33.00	45.00
ASWP	WORD PROCESSOR	3	36.00	46.50
ASWP	WORD PROCESSOR	4	45.00	51.00
ASWP	WORD PROCESSOR	5	48.00	66.00
ASWP	WORD PROCESSOR	6	51.00	69.00
ASAD	ADMIN. ASSISTANT	1	33.00	39.00
ASAD	ADMIN. ASSISTANT	2	36.00	49.50
ASAD	ADMIN. ASSISTANT	3	39.00	55.50
ASAD	ADMIN. ASSISTANT	4	42.00	57.00
ASAD	ADMIN. ASSISTANT	5 -	45.00	60.00
ASOS	OFFICE CLERK	1	33.00	37.50
ASOS	OFFICE CLERK	2	30.00	39.00
CMPC	COMMUNICATION GRAPHICS	4	36.00	45.00
CMPC	COMMUNICATION GRAPHICS	5	42.00	52.50
CMPC	COMMUNICATION GRAPHICS	6	51.00	60.00
CMPC	COMMUNICATION GRAPHICS	7	54.00	75.00
CMPC	(COMMUNICATION GRAPHICS	8	69.00	81.00

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration State Procurement Bureau, (hereinafter referred to as "State") whose address and phone number are 125 North Roberts PO Box 200135 Helena MT 59620-0135, (406) 444-2575 and **KirK Environmental LLC**, (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, address and phone number are 81-0519098, PO Box 636 Sheridan MT 59749, (406) 842-7224 and Fax: (406) 842-7230.

THE PARTIES AGREE AS FOLLOWS:**2. EFFECTIVE DATE, DURATION AND RENEWAL**

(a) This contract **SPB01-20P-I** shall take effect on August 20, 2001. The Contract shall terminate on August 30, 2005, unless terminated earlier in accordance with the terms of this Contract.

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in two-year intervals, or any interval that is advantageous to the State, or a period not to exceed two additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a six-year period.

3. PRICE ADJUSTMENTS

Contractor and the State agree price adjustments may be made at the time of contract renewal under the following conditions: New negotiated rates can be established in two-year time increments, not to exceed 5% for the two-year period.

4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following services:

Contractors will reserve the option to attend regular FBC bimonthly meetings to present their ideas for critical VNRS and TMDL projects. The FBC is interested in hearing innovative ideas and new direction for these efforts that have a high potential to realize measurable improvements in water quality in Flathead Lake. Depending on grant funding cycles, ideas and projects the FBC agrees are critical will be prioritized for grant funding. The VNRS coordinator will develop the project team, approach, budget, and technical write up for selected grant applications. If the FBC is successful in receiving the grant funding, the FBC will award a contract to the contractor, team, or agency(s) responsible for the presenting the idea or project. The goal of this strategy is to offer grant funding as a financial incentive to contractors, teams, and agencies that have critical or innovative ideas that will result in measurable improvement in Flathead Lake water quality. Contractors will not be compensated for presenting their project ideas. In some cases, project development may be difficult due to limited grant funding or large project costs (e.g. sewerage portions of the Flathead Lake perimeter). The VNRS coordinator will research ways to fund these projects and propose alternative approaches to the FBC for final decision making whether to move forward or not with these projects. Timing between when projects are proposed and when projects are actually implemented often requires 6 to 12 months. In addition, the contractors for technical services should

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discuss potential projects and administrative needs with the VNRS Coordinator before presenting ideas or projects to the FBC.

VNRS/TMDL Coordination and Oversight

Contractor will provide VNRS coordination services for the Flathead Basin. The VNRS coordinator is responsible for working with and overseeing contractors conducting projects for the FBC, developing project teams and grant applications (e.g., section 319 and 104(b)(3) grants, renewable resource grants/other DNRC grants, US Fish and Wild Life grants, FWP Future Fisheries grants, private foundations such as the Bonneville Environmental Foundation, and funding others), maintaining internal and external VNRS partnerships, act as the spokesperson for the FBC VNRS, general coordination of VNRS and TMDL efforts, provide the FBC with technical input on VNRS and TMDL projects, develop implementation plans, attend FBC meetings and conduct presentations, and communicate with the FBC on a regular basis for direction and leadership. The FBC may also request the VNRS coordinator provide watershed scale coordination services. The FBC anticipates funding the VNRS coordination services in mid 2001 for period of at least two and possibly three years pending grant funding approval.

Education Services

Education is an important part of an effective VNRS and TMDL program. Contractors in all service areas may have the opportunity to provide education services through future grant funding. In addition, the State is interested in education initiatives that have a high likelihood of citizens, businesses, or entities learning how to better manage natural resources and nonpoint source waste streams.

Grant Funding and No Guarantee of Project Funding

The State does not warranty or provide any guarantee contractors will be offered project funding under this procurement. The FBC has and will continue to apply for grant funding on an annual basis. For example, the FBC has successfully retained grant funding to implement the VNRS, implement buffer zone demonstration projects, education efforts, assess wetlands and riparian areas, conduct education projects, and develop restoration plans in an amount over \$250,000 in grant funding. In addition, about \$250,000 of pending grants are under review for 2001 funding for coordination services, a new watershed project, student funding, and groundwater monitoring. For 2002 and beyond, the FBC anticipates submitting future grant applications on an annual basis, and expanding the number of application as appropriate to implement similar actions and fund on-the-ground actions that reduce nutrient loading from surface water, groundwater, and aerial/precipitation deposition. While the FBC anticipates future grant funding and hopes contractors will provide new direction for grants the FBC submits, the State cannot guarantee project funding under this solicitation because grant funding may or may not retained in the end.

Allocation of Grant Funding

The State intends to award grant funding to the contractor(s) provided they identify the project, they were selected under this procurement, they can demonstrate they have the resources to efficiently and effectively complete the project as proposed, and if applicable, demonstrated excellent past performance on projects completed for the FBC. In cases where the contractors did not identify the project, or the VNRS coordinator independently proposes a project, and the FBC retains grant funding

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(i.e., potential grant funding anticipated in 2001), the State has three distinct options for awarding this funding. Option 1 would be to select a contractor from this procurement list who is qualified to conduct the work and rotate the contractor list for future work. Option 2 would be to request simplified bids or mini proposals from successful contractors qualified to perform the work in the service area(s) needed. The third option is to not use the contractors on this list, and put the project out to competitive bid following standard procurement procedures. In the latter case, the State would only select this option if the type of services required are not available under this contract or there are contractor performance issues. Lastly, grant funding may be allocated to students, non-profit organization support, and agencies in order to properly set up and complete projects.

Collaboration on Potential Projects

The State encourages contractors to work with other contractors on the list after all procurement processes are complete. In some cases, services from another contractor may be needed to complete projects. An example would be if an environmental / watershed contractor proposed stream restoration work. Both construction and native plant stock are needed and should be provided through the contractor list from this competitive bid process vs. proposing the State go out to competitive bid for these services and products. Exceptions to this strategy will be evaluated on a case by case basis. The contractor selected as the VNRS/TMDL coordinator will take on a lead role in setting up projects, attempting to use contractors selected under this procurement, and leverage help from nonprofit organizations, educational institutions, and government agencies working in partnership with the FBC.

5. CONSIDERATION/PAYMENT

(a) In consideration for the services to be provided, the State shall pay according to the negotiated agreement for each project. Hourly rates and miscellaneous charges as provided in the Contractor's response to request for proposal SPB-01-20P shall apply.

(b) the State may withhold payments to the contractor if the contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

(c) U.S. Funds: All prices and payments must be in U.S. dollars.

6. ACCESS AND RETENTION OF RECORDS

(a) The contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

(b) The contractor agrees to create and retain records supporting the services rendered (or supplies delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

8. FAVORABLE PRICES

Contractor agrees that, through the term of the initial contract and any agreed-upon extension, the State will be entitled to any lower prices made available to any other customer of comparable volume.

9. HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this or a subsequent contract.

10. INSURANCE

General Requirements: The contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the contractor, agents, employees, assigns, or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.

Specific Requirements for Commercial General Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the contractor, including the insured's general supervision of the contractor; products and completed operations; premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: The contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$250,000 per occurrence and \$500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles leased, hired, or borrowed by the contractor.

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Specific Requirements for Professional Liability: The contractor may be required to purchase and maintain Professional Liability Occurrence coverage for large engineering projects. This type of insurance coverage will only be required for specific large projects and therefore the State will allow the contractor to purchase and provide proof of coverage as needed. When necessary the Professional Liability Occurrence coverage must have combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence or the contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide claims made coverage with three years of additional tail to commence at the conclusion of the contract at the discretion of the agency and with the prior approval of the State Procurement Bureau.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: 1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to the State, its officers, officials, employees, and volunteers, or; 2) The contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: Insurances must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the State's purchase order number or contract number. This insurance must be maintained for the duration of the contract. The State Procurement Bureau must receive all required certificates and endorsements within 10 days from the date of the Request for Documents notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.

Primary Insurance: The contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

11. WORKERS' COMPENSATION/INDEPENDENT CONTRACTOR

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

12. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services--i.e., at least 50% of the work must be performed by bona fide Montana residents in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with section 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department

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of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

The contract must also contain the provision that each contractor, subcontractor, and employer maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Heavy and Highway Construction and Montana Prevailing Wage Rates for Nonconstruction Services Occupations are attached for reference.

13. CONTRACTOR REGISTRATION

The contractor is required to be registered with the Department of Labor and Industry under Sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Ref: 39-9-401, MCA).

14. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the State agency or department for whom a public works construction contract over \$5,000 is being performed, to withhold one percent (1%) of all payments and to transmit such monies to the Department of Revenue.

15. INTELLECTUAL PROPERTY

(a) All patents and other legal rights in or to inventions arising out of activities funded in whole or in part by this contract must be available to the State for royalty-free and nonexclusive licensing. The contractor shall notify the State in writing of any invention conceived or reduced to practice in the course of performance of this contract.

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(b) the State and the State shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

16. COMPLIANCE WITH LAWS

The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. ON-SITE REQUIREMENTS

Each contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful vendor of their obligations to furnish all materials and labor necessary to carry out the provisions of the contract.

The contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. They shall be responsible for all damages or injury due to their action or neglect.

The contractor shall maintain access to all phases of the contract pending inspection by the owner or their representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the contractor fail to respond to the notice or not remedy the defects, the owner may have the work corrected at the expense of the contractor.

CLEAN-UP

The contractor shall:

- a) keep the premises free from debris and accumulation of waste;
- b) remove all construction smears and stains from finished surfaces; and
- c) remove all construction equipment, tools and excess materials before final payment by the owner.

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18. COOPERATIVE PURCHASING

Under Montana law, local governments and certain non-profit agencies, as defined in Section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these local agencies.

19. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 2002.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

20. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

21. CONTRACT TERMINATION

(a) The State may, by written notice to the contractor, terminate this contract in whole or in part at any time the contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

22. LIAISON AND SERVICE OF NOTICES

Written notices or complaints will first be directed to the liaison.

Contractor Liaison:

Scott Payne

KirK Environmental LLC

PO Box 636

Sheridan MT 59749

Phone: (406) 842-7224

Fax: (406) 842-7230

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Agency Liaison:

Penny Moon, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-3313
Fax #: (406) 444-2529

23. MEETINGS

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the Department of Administration. The contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

25. SCOPE, AMENDMENT AND INTERPRETATION

(a) This contract consists of 10 numbered pages, any Attachments as required, RFP # SPB-01-20P as amended and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.


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26. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF
ADMINISTRATION
STATE PROCUREMENT BUREAU

KIRK ENVIRONMENTAL LLC
P.O. BOX 636
SHERIDAN MT 59749
FEDERAL ID #81-0519098


BY: 
PENNY MOON, Contracts Officer

BY:  Owner

DATE: 8/30/01

DATE: 9/4/01

Approved as to legal content:


Legal Counsel 8/30/01
Department of Administration

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

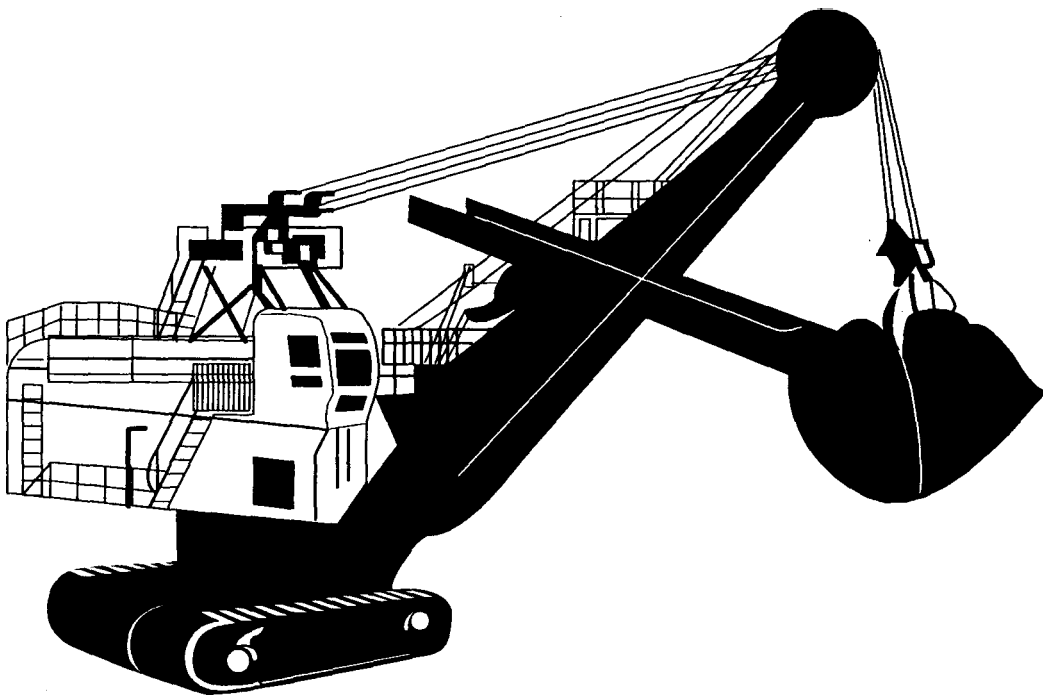
Personnel	Task	Rate	Comments
Scott Payne Kirk	Voluntary Nutrient Reduction Strategy Coordinator	\$50.00/hour	Scott Payne will provide project leadership and coordination activities. In addition, Scott Payne will provide the technical expertise as needed for oversight of Area 1.
Scott Payne Kirk	Travel time to and from Flathead	\$25.00/hour	Kirk will charge a reduced travel rate when traveling to and from the Flathead (similar to the current Ashley Creek Contract).

Incidentals

Item	Fee
Billing Support	No charge
Word Processing (e.g., support help for Scott)	None anticipated
Photocopying	\$0.10/sheet or cost of service
Postage	Cost of service (no pass through fee)
Long Distance Telephone (if required)	No charge
Accommodation and Per Diem (if required - See Section 5)	State rates
Out-of-Town Mileage	\$0.32/mile (car or truck)
Computer Time	No charge

NOTES: Large photocopy jobs may be outsourced, and the rate charged by the service will apply with no pass through fee. Color copies may be required and will be outsourced. Color photocopy rates are estimated at \$1.00/page.

Montana Prevailing Wage Heavy and Highway Construction



Rates Effective July 1, 2000

Published by the Office of Research and Analysis Job Service
Division Montana Department of Labor and Industry

Montana Prevailing Wage Rates

Nonconstruction Services Occupations

Statewide Effective
August 13, 1999

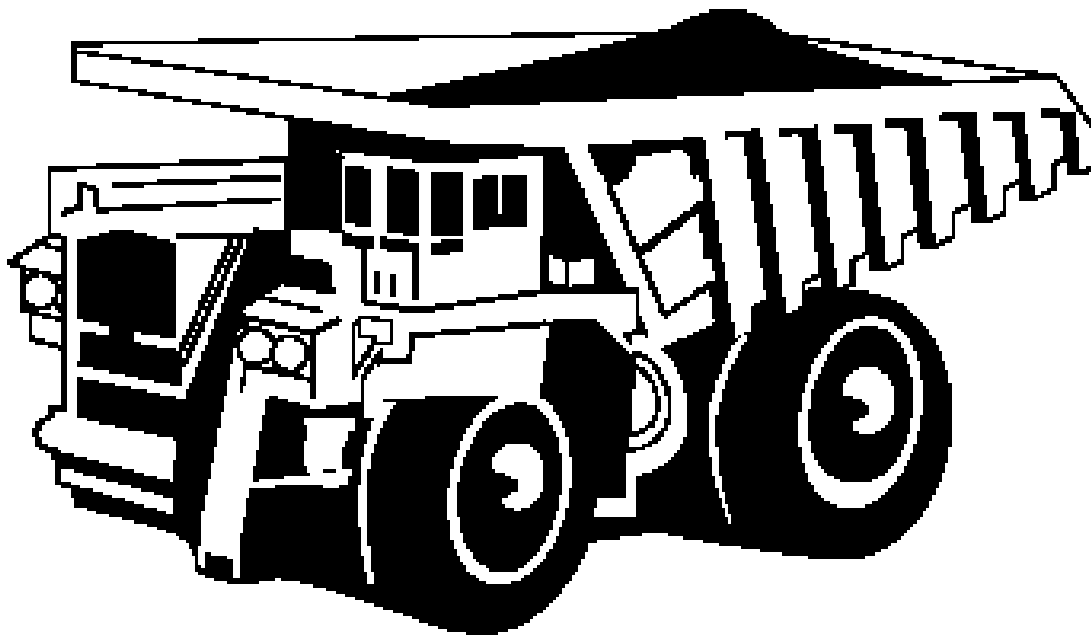


Published by the:

Office of Research & Analysis Job
Service Division Montana Department of
Labor & Industry

Contract number SPB01-20P-D with Land and Water Consulting will utilize the following prevailing wage rates.

MONTANA 2002 HEAVY AND HIGHWAY CONSTRUCTION Prevailing Wage Rate Book



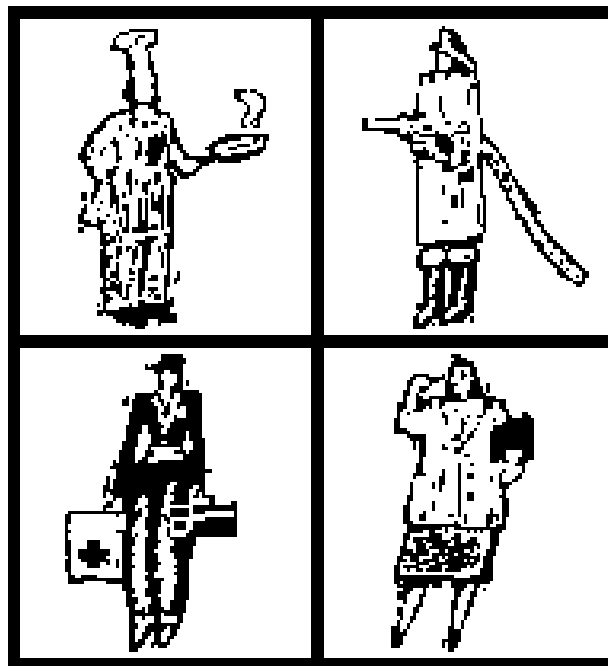
Rates Effective August 1, 2002

**Published by the Research and Analysis Bureau
Workforce Services Division
Montana Department of Labor and Industry**

FLATHEAD BASIN LANDSCAPE/ENVIRONMENTAL/ENGINEERING SERVICES

Contract number SPB01-20P-D with Land and Water Consulting will utilize the following prevailing wage rates.

Montana Prevailing Wage Nonconstruction Services



Rates Effective June 30, 2001

**Published by the Research and Analysis Bureau
Job Service Division
Montana Department of Labor and Industry**